

MT LEGISLATIVE HISTORY

Chapter 380 19 77

Bill H _____ S 386

Original bill & hist. ☒ C

H. Committee on Business & Industry

S. Committee on Highways & Transportation

Hearing Date(s) Mar 14 ☒ C

Hearing Date(s) Feb 12 ☒ C 9:30 am
6:00 pm

Mar 21 ☒ C

Feb 19 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 21 ☒ C

Feb 19 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Originally assigned to Senate Business & Industry,
but was re-assigned on 2-3 to Sen. Highways.
The Law Library has no minutes from Sen.
Business & Industry.

Law Library has no copy of "Attachment 2", dated 2/7 pm;
or Vucanovich/Hess "Attached testimony"

1 *Senate* BILL NO. *386*
 2 INTRODUCED BY *Murray Devine Tunney*
 3 *Joseph Boylan, Robbie Olson, Nathan E. Smith,*
 4 *Mr. Ballman, Aber, Double Four Rasmussen, Koleski,*
 5 RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
 6 VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
 7 PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE
 8 MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR
 9 ADMINISTRATION BY THE DEPARTMENT OF JUSTICE; PROVIDING FOR
 10 THE REGULATION AND REVIEW OF TRANSACTIONS BETWEEN NEW MOTOR
 11 VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS,
 12 DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR THE LIMITATION OF
 13 NEW MOTOR VEHICLE DEALER'S PRODUCTS LIABILITY; PROVIDING FOR
 14 NOTICE, HEARING, AND APPEAL IN DISPUTES BETWEEN NEW MOTOR
 15 VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS,
 16 DISTRIBUTORS, AND IMPORTERS; PROHIBITING COERCION OF
 17 MOTOR VEHICLE DEALERS; AND PROVIDING FOR CIVIL AND CRIMINAL
 18 PENALTIES."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Definitions. As used in this act, the
 22 following definitions apply:

23 (1) "Community" means the relevant market area of a
 24 franchise. For the purposes of this act, the relevant market
 25 area of a franchise is the county or counties in which the

1 franchise is located.

2 (2) "Distributor" or "wholesaler" means a person who
 3 sells or distributes new motor vehicles to new motor vehicle
 4 dealers in this state or who maintains distributor
 5 representatives in this state.

6 (3) "Distributor branch" means a branch office
 7 maintained or availed of by a distributor or wholesaler for
 8 the sale of new motor vehicles to new motor vehicle dealers
 9 in this state for directing or supervising its
 10 representatives in this state.

11 (4) "Factory branch" means a branch office maintained
 12 or availed of by a manufacturer for the sale of new motor
 13 vehicles to distributors or for the sale of new motor
 14 vehicles to new motor vehicle dealers in this state or for
 15 directing or supervising its representatives in this state.

16 (5) "Franchise" means a contract between or among two
 17 or more persons when all of the following conditions are
 18 included:

19 (a) a commercial relationship of definite duration or
 20 continuing indefinite duration is involved;

21 (b) the franchisee is granted the right to offer,
 22 sell, and service in this state new motor vehicles
 23 manufactured or distributed by the franchisor;

24 (c) the franchisee, as a separate business,
 25 constitutes a component of franchisor's distribution system;

INTRODUCED BILL

1 and

2 (d) the operation of the franchisee's business is
3 substantially reliant on the franchisor for the continued
4 supply of new motor vehicles, parts, and accessories.

5 (6) "Franchisee" means a person who receives new motor
6 vehicles from the franchisor under a franchise and who
7 offers, sells, and services such new motor vehicles to and
8 for the general public.

9 (7) "Franchisor" means a person who manufactures,
10 imports, or distributes new motor vehicles and who may
11 enter into a franchise.

12 (8) "Importer" means a person who transports or
13 arranges for the transportation of a foreign manufactured
14 new motor vehicle into the United States for sale in this
15 state.

16 (9) "Manufacturer" means a person who manufactures or
17 assembles new motor vehicles or who manufactures or installs
18 on previously assembled truck chassis special bodies or
19 equipment, which when installed form an integral part of the
20 new motor vehicle and which constitutes a major
21 manufacturing alteration, but does not include a person who
22 installs a camper on a pickup truck.

23 (10) "Motor vehicle" means a self-propelled vehicle
24 including without limitation an automobile, motor bus,
25 motorcycle, truck, and a truck-tractor.

1 (11) "New motor vehicle dealer" means a person who
2 buys, sells, exchanges, or offers or attempts to negotiate a
3 sale or exchange or any interest in or who is engaged in the
4 business of selling new motor vehicles or used motor
5 vehicles taken in trade on new motor vehicles.

6 (12) "Department" means the department of justice.

7 Section 2. Persons subject to licensing. (1) No
8 manufacturer, distributor, factory branch, or distributor
9 branch may engage in business in Montana except in
10 accordance with the requirements of this act. The provisions
11 of this act do not apply to a public officer engaged in the
12 discharge of his official duties or to a trustee, receiver,
13 or other officer acting under the jurisdiction of a court;
14 to financial institutions disposing of repossessed vehicles;
15 or to a person disposing of his personal vehicle. The
16 provisions of this act regulating and licensing
17 manufacturers, distributors, factory branches, distributor
18 branches, and franchisors apply only to those manufacturers,
19 distributors, factory branches, distributor branches, and
20 franchisors of motor vehicles as defined by this act.

21 (2) A manufacturer, distributor, factory branch,
22 distributor branch, importer, or franchisor transacting
23 business within Montana by offering, selling, trading,
24 consigning, or otherwise transferring a new motor vehicle to
25 a new motor vehicle dealer must be licensed by the state of

1 Montana. The department shall issue licenses to qualified
2 applicants upon receipt of a license fee in the amount of
3 \$15 accompanied by the information required in this section.
4 The following information shall be submitted by an applicant
5 upon forms supplied by the department:

- 6 (a) the name and address of the applicant;
- 7 (b) the make and model of each new motor vehicle to be
8 franchised;
- 9 (c) the name and address of each of the applicant's
10 franchisees within the state; and
- 11 (d) the name and address of each factory branch,
12 distributor branch, agent or representative within the
13 state.

14 (3) The license may be renewed each year if the
15 applicant is in compliance with the provisions of this act,
16 remits a renewal fee in the amount of \$15, and notifies the
17 department of any changes in the information previously
18 supplied.

19 (4) No new motor vehicle may be sold in this state
20 unless either the manufacturer on direct dealership of
21 domestic vehicles, the importer of foreign manufactured
22 vehicles on direct dealership, or the distributor on
23 indirect dealerships of either domestic or foreign vehicles
24 is licensed as provided in this act. The obtaining of a
25 license under this act conclusively establishes that a

1 manufacturer, distributor, or importer is subject to the
2 laws of this state regulating manufacturers, importers, and
3 distributors.

4 Section 3. Administration. The department shall
5 supervise and regulate all persons required by this act to
6 be licensed. In the supervision and regulation thereof the
7 department may:

- 8 (1) make investigations it considers necessary;
- 9 (2) conduct hearings and compel attendance of
10 witnesses at the hearings pursuant to Title 82, chapter 42;
11 and
- 12 (3) prescribe rules it determines necessary to carry
13 out the provisions of this act.

14 Section 4. Filing agreement -- product liability. (1)
15 A franchisee must, at the time he applies for a new motor
16 vehicle dealer license under the provisions of 53-118 file
17 with the department a certified copy of his written
18 agreement with a manufacturer and a certificate of
19 appointment as dealer or distributor. The certificate of
20 appointment must be signed by an authorized agent of the
21 manufacturer of domestic vehicles whenever there is a direct
22 manufacturer dealer agreement or by an authorized agent of
23 the distributor whenever the manufacturer is wholesaling
24 through an appointed distributorship. The certificate must
25 be signed by an authorized agent of the importer of

1 foreign-made vehicles whenever there is a direct
2 importer-dealer agreement or by an authorized agent of the
3 distributor whenever there is an indirect distributor-dealer
4 agreement. The distributor's certificate of appointment must
5 be signed by an authorized agent of the manufacturer of
6 domestically manufactured vehicles or by an authorized agent
7 of the manufacturer or importer of foreign made vehicles.

8 (2) A franchisee need not file a written agreement or
9 certificate of appointment if the manufacturer on direct
10 dealerships or distributor on indirect dealerships or
11 importer on direct dealerships uses the identical basic
12 agreement for all its franchised dealers or distributors in
13 this state and certifies in the certificate of appointment
14 that the blanket agreement is on file and the written
15 agreement with the particular dealer or distributor,
16 respectively, is identical with the filed blanket agreement
17 and that he has filed with the department one such agreement
18 together with a list of franchised dealers or distributors.

19 (3) A manufacturer, distributor, or importer shall
20 notify the department within 30 days of any revision of or
21 addition to the basic agreement on file or of any franchise
22 supplement to the agreement. Annual renewal of a certificate
23 filed as provided in this section is not required.

24 (4) A manufacturer on direct dealerships, distributor
25 on indirect dealerships, or importer on direct dealerships

1 who has filed with the department an agreement used by all
2 its franchisees in this state together with a list of all
3 such franchisees and who fails to notify the department
4 within 30 days of any revision, change, or addition thereto
5 is guilty of a misdemeanor and upon conviction shall be
6 fined not to exceed \$500.

7 (5) A manufacturer must file with the department a
8 copy of the delivery and preparation obligations required to
9 be performed by a dealer prior to the delivery of a new
10 motor vehicle to a buyer. These delivery and preparation
11 obligations constitute the dealer's only responsibility for
12 product liability as between the dealer and the
13 manufacturer. Any mechanical, body, or parts defects arising
14 from an express or implied warranty of the manufacturer
15 constitute the manufacturer's product or warranty liability
16 only. The manufacturer must compensate an authorized dealer
17 who performs work to rectify the manufacturer's product or
18 warranty defect or delivery and preparation obligations at
19 the dealer's regular established retail rate for similar
20 work.

21 (6) The dealer must furnish the purchaser of a new
22 vehicle with a signed copy of the manufacturer's delivery
23 and preparation requirements indicating that each of those
24 requirements has been performed.

25 Section 5. Limitations on cancellation and

1 termination. (1) Notwithstanding the terms, provisions, or
2 conditions of any agreement or franchise, no franchisor may
3 cancel, terminate, or refuse to continue a franchise unless
4 the franchisor has cause for termination or noncontinuance.

5 (2) No franchisor may enter into a franchise for the
6 purpose of establishing an additional new motor vehicle
7 dealership in any community in which the same line-make is
8 then represented unless there is good cause for an
9 additional new motor vehicle dealership under a franchise
10 and that it is in the public interest.

11 (3) If a franchisor seeks to terminate or not continue
12 a franchise or seeks to enter into a franchise establishing
13 an additional new motor vehicle dealership of the same
14 line-make, the franchisor shall, within 30 days of the
15 intended action, and the franchisee may, at any time, file a
16 notice with the department of intention to terminate or not
17 continue the franchise or to enter into a franchise for
18 additional representation of the same line-make. No notice
19 of intention to terminate or not continue a franchise may be
20 required from a franchisor until the conclusion of any
21 review proceeding of that intention offered to the
22 franchisee under the franchise. This section does not apply
23 to an intended termination or noncontinuance of a franchise
24 that the franchisee elects voluntarily, pursuant to a plan
25 established by a franchisor, to submit to binding

1 arbitration.

2 (4) Upon receiving a notice of intention under the
3 provisions of subsection (3) of this section, the department
4 shall, within 5 days of receipt of a notice of intention,
5 send by certified mail, with return receipt requested, a
6 copy of the notice to the franchisor and to the franchisee
7 whose franchise the franchisor seeks to establish,
8 terminate, or not continue. If the notice states an intent
9 to establish an additional new motor vehicle dealership, a
10 copy of the notice shall be sent within 5 days of receipt to
11 all franchisees in the community who are then engaged in the
12 business of offering to sell or selling the same line-make.
13 Copies of notices shall be addressed to the principal place
14 of business of each recipient and to the statutory agent of
15 each corporate recipient. The department may also give a
16 copy of the franchisor's notice to any other parties whom
17 the department may consider interested persons, such copy to
18 be in the form and substance and given in the manner the
19 department finds appropriate.

20 (5) A person who receives or is entitled to receive a
21 copy of a notice provided for in subsection (4) of this
22 section may object to the approval of the proposed action by
23 filing a written objection with the department within 15
24 days from the date the notice was received by the person
25 entitled to receive the notice. If no objection is filed

1 within 15 days from the date the notice was received, the
2 proposed action shall be approved.

3 (6) If a timely objection has been filed, the
4 department shall enter an order fixing the time, which shall
5 be within 30 days of the date of the order, and place of a
6 hearing on the objection and shall send by certified mail
7 with return receipt requested a copy of the notice provided
8 for in subsection (4) of this section.

9 (7) The department may upon request continue the date
10 of hearing for a period of 30 days and may upon application,
11 but not ex parte, continue the date of hearing for an
12 additional period of 30 days.

13 (8) Upon hearing, the franchisor has the burden of
14 proof to establish that good cause exists to terminate or
15 not continue the franchise. When there is an objection to
16 the establishment of a new motor vehicle dealership, the
17 burden of proof that good cause does exist shall be with the
18 franchisor.

19 (9) The rules of evidence for such hearing shall be
20 those found in Title 82, chapter 42. The department shall
21 reasonably apportion all costs between the parties.

22 (10) Notwithstanding the terms, provisions, or
23 conditions of an agreement or franchise, the following do
24 not constitute good cause for the termination or
25 noncontinuance of a franchise:

1 (a) a change in ownership of the franchisee's
2 dealership;

3 (b) the fact that the franchisee refused to purchase
4 or accept delivery of a new motor vehicle, part, accessory,
5 or any other commodity or service not ordered by the
6 franchisee.

7 (11) In instances where the change in ownership has the
8 effect of the sale of the franchise, the franchisor may not
9 without good cause withhold its consent to the sale. Good
10 cause relates only to the transferee's financial and
11 managerial capabilities or to the inability of the
12 transferee to comply with a state or federal law relating to
13 new motor vehicle dealerships. The burden of establishing
14 good cause is upon the franchisor.

15 (12) Notwithstanding the terms, provisions, or
16 conditions of an agreement or franchise, in the event of the
17 sale or transfer of ownership of the franchisee's dealership
18 by sale or transfer of the business or by stock transfer to
19 the dealer's spouse, son, or daughter, the franchisor shall
20 give effect to such a change in the franchise unless the
21 transfer of the franchisee's new motor vehicle dealer's
22 license is denied or the new owner is unable to obtain a
23 license under the laws of this state.

24 (13) The department may issue subpoenas, administer
25 oaths, compel the attendance of witnesses, and production of

1 books, papers, documents, and all other evidence. The
2 department may apply to the district court of the county in
3 which the hearing is held for a court order enforcing this
4 section. The hearing shall be conducted pursuant to Title
5 82, chapter 42.

6 (14) If a franchisor enters into or attempts to enter
7 into a franchise, whether upon termination or refusal to
8 continue another franchise or upon the establishment of an
9 additional new motor vehicle dealership in a community where
10 the same line-make is then represented without first
11 complying with the provisions of this act, no license under
12 53-118 may be issued to that franchisee or proposed
13 franchisee to engage in the business of selling new motor
14 vehicles manufactured or distributed by that franchisor.

15 (15) In determining whether good cause has been
16 established for terminating or not continuing a franchise,
17 the department shall take into consideration the existing
18 circumstances, including but not limited to:

19 (a) amount of business transacted by the franchisee;

20 (b) investment necessarily made and obligations
21 incurred by the franchisee in the performance of his part of
22 the franchise;

23 (c) permanency of the investment;

24 (d) whether it is injurious to the public welfare for
25 the business of the franchisee to be discontinued;

1 (e) whether the franchisee has adequate new motor
2 vehicle facilities, equipment, parts, and qualified
3 management, sales, and service personnel to reasonably
4 provide consumer care for the new motor vehicles sold at
5 retail by the franchisee and any other new motor vehicle of
6 the same line-make;

7 (f) whether the franchisee refuses to honor warranties
8 of the franchisor to be performed by the franchisee if the
9 franchisor reimburses the franchisee for such warranty work
10 performed by the franchisee; and

11 (g) except as provided in subsection (10) of this
12 section, failure by the franchisee to substantially comply
13 with those requirements of the franchise that are determined
14 by the department to be reasonable and material.

15 (16) In determining whether good cause has been
16 established for entering into an additional franchise for
17 the same line-make the department shall take into
18 consideration the existing circumstances, including but not
19 limited to:

20 (a) amount of business transacted by other franchisees
21 of the same line-make in that community;

22 (b) investment necessarily made and obligations
23 incurred by other franchisees of the same line-make in that
24 community in the performance of their part of their
25 franchises; and

1 (c) whether the franchisees of the same line-make in
2 that community are providing adequate consumer care for the
3 new motor vehicle products of the line-make which shall
4 include the adequacy of new motor vehicle dealer sales and
5 service facilities, equipment, supply of parts, and
6 qualified management, sales, and service personnel.

7 (17) A transcript of the testimony of each witness
8 taken at the hearing shall be made and preserved. Within 30
9 days after the hearing, the department shall make written
10 findings of fact and conclusions and enter a final order.

11 (18) Any party to the hearing before the department may
12 appeal pursuant to Title 82, chapter 42.

13 Section 6. Coercion prohibited. (1) A manufacturer of
14 new motor vehicles, factory branch, distributor, distributor
15 branch, importer, field representative, officer, agent, or
16 any representative thereof may not coerce or attempt to
17 coerce a new motor vehicle dealer to accept delivery of a
18 new motor vehicle, a part, or an accessory therefor, or any
19 other commodity that has not been ordered by the dealer.

20 (2) A manufacturer, factory branch, distributor,
21 distributor branch, importer, field representative, officer,
22 agent or representative thereof may not coerce or attempt to
23 coerce a new motor vehicle dealer to enter into an agreement
24 with such manufacturer, factory branch, distributor,
25 distributor branch, or representative thereof or do any

1 other act unfair to the dealer by:

2 (a) threatening to cancel or not renew a franchise
3 existing between the manufacturer, factory branch,
4 distributor, distributor branch, or representative thereof
5 and the dealer; or

6 (b) threatening to withhold, delay, or disrupt the
7 receipt of new motor vehicles or any motor vehicle parts or
8 supplies ordered by the dealer from the manufacturer,
9 factory branch, distributor, distributor branch, importer,
10 or representative or agent thereof.

11 Section 7. Penalties. (1) A person who violates any
12 provision of this act is guilty of a misdemeanor and upon
13 conviction shall be fined not less than \$500 or more than
14 \$1,000 for each violation. Each day that a violation
15 continues or occurs constitutes a separate violation.

16 (2) If any new motor vehicle dealer incurs pecuniary
17 loss due to a violation of this act by a manufacturer,
18 distributor, importer, or factory branch or representative
19 or agent thereof, the dealer may recover damages therefor in
20 a court of competent jurisdiction in amount equal to three
21 times the pecuniary loss, together with costs including
22 reasonable attorney's fees.

23 Section 8. Cease and desist orders. When the
24 department has reasonable cause to believe, from information
25 furnished to or from an investigation made by it, that any

1 person is engaged in any business regulated by this act
2 without being licensed as required, it shall immediately
3 issue and serve upon such person, by certified mail, a cease
4 and desist order, requiring him to cease and desist from
5 further engaging in that business. Upon failure of that
6 person to comply with the order, the department shall file
7 an action in the district court of Lewis and Clark County to
8 restrain and enjoin the person from engaging in the
9 business. The court in the action shall proceed as in other
10 actions for injunctions.

-End-

STATE OF MONTANA

REQUEST NO. 374-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 386 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to regulate the relationship between new motor vehicle dealers and new motor vehicle manufacturers, and importers; providing for the licensing of new motor vehicle manufacturers, distributors, and importers; providing for administration by the Department of Justice; providing for the regulation and review of transactions between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; providing for the limitation of new motor vehicle dealers' products liability; providing for notice, hearing, and appeal in disputes between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; prohibiting coercion of new motor vehicle dealers; and providing for civil and criminal penalties.

ASSUMPTIONS:

1. The number of licenses issued will be less than 100.
2. The Registrar's bureau will not be required to provide forms for the information required in Section 4(6).

FISCAL IMPACT:

Minimal.

Richard L. Drury

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-77

COMMITTEE ON Business and Industry

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
SB 306	1/27/77	2/17/77	2/17/77			2/17/77			
SB 328	1/28/77	2/12-2/17	2/17/77	WITHOUT	RECOMMENDATION				
SB 329	1/28/77	REFERRED TO	PUBLIC HEALTH						
SB 345	1/31/77	2/17/77	2/17/77			2/17/77			
SB 362	2/1/77	REFERRED TO	HIGHWAYS						
SB 364	2/1/77	REFERRED TO	EDUCATION						
SB 366	2/1/77	REFERRED TO	HIGHWAYS						
SB 367	2/1/77	REFERRED TO	HIGHWAYS						
SB 370	2/2/77	2/16-2/17	2/17/77	2/17/77					
SB 374	2/2/77	REFERRED TO	HIGHWAYS						
SB 375	2/2/77	REFERRED TO	HIGHWAYS						
SB 383	2/2/77	2/17-2/18	2/18/77	2/18/77					
SB 386	2/3/77	REFERRED TO	HIGHWAYS						
SB 390	2/4/77	REFERRED TO	HIGHWAYS						
SB 391	2/4/77	REFERRED TO	HIGHWAYS						
SB 392	2/4/77	REFERRED TO	HIGHWAYS						

(Use Separate Sheet for Senate, House Bills, and Resolutions)

COMMITTEE ON HIGHWAYS AND TRANSPORTATION

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
362	2/9	2/15	2/17			2/17			
366	2/9	2/15	2/17	2/17					
367	2/9	2/15	2/17			2/17			
374	2/9	2/15	2/17		2/17				
375	2/9	2/15	2/17			2/17			
386	2/9	2/17	2/19			2/19			
390	2/9	2/15	2/17	2/17					
391	2/9 *	2/15	2/17	2/17					
392	2/9	2/15	2/17			2/17			
407	2/5	2/10	2/10		2/10				
411	2/7	2/19	2/19		2/19				
412	2/7	2/17							
420	2/9	2/17	2/17			2/17			
426	2/10	2/17	2/17			2/17			
432	2/12	2/19							
440	2/17	2/19	2/24			2/14			

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

February 17, 1977

The eleventh meeting of the Highways and Transportation Committee was called to order by Chairman Manning on the above date in Room 404 of the State Capitol Building at 9:30 a.m.

ROLL CALL: Senator Etchart arrived at 9:50, Senator Graham was excused and Senator Healy was absent. All other members were present.

Those present to testify included the following:

James Beck	Department of Highways
S. G. Gilliatt	General Motors Corporation
J.C. Purcell	" " "
Geoffrey L. Brazier	Consumer Counsel
Roland D. Pratt	Montana Optometric Association
John B. Rigg, Jr.	Motor Vehicle Manufacturers Assoc.
Larry Majerus	Administration of Motor Vehicles
William S. Gosnell	Legislative Fiscal Analyst
Tom Crowley	City Engineer, Missoula
Bill Murray	Senator
Dan Murray	Self
Gerald F. Raunig	Montana Auto Dealers Association
Larry Huss	" " " "
Thomas E. Schneider	Montana Public Employees Assoc.
Ted Stofffuss	Montana Highway Patrol
E.J. Bowlds	State Commission on Local Government

Chairman Manning called upon the subcommittee to report on the bills that were under consideration dealing with the PSC.

REPORT ON SENATE BILL 391: Mr. Jack Burke of the Montana Power Company told the committee that the subcommittee had agreed that SB 391 was a housekeeping measure that provided for a 30 day filing time limit. the subcommittee was in agreement that this bill should be recommended do pass.

REPORT ON SENATE BILL 392: Mr. Jack Burke continued his report noting that there had been an error in the title of this bill and that the last two words of the title should be amended by striking "PUBLIC UTILITIES" and inserting "MOTOR CARRIERS". The public utilities were not in opposition to this bill as amended, but Mr. Burke noted that he could not speak for the motor carriers.

REPORT ON SENATE BILL 374: Mr. Burke commented that the subcommittee was in agreement that this bill constituted a tax and that therefore it should either be killed or sent to the Finance and Claims Committee. The utilities were in opposition to the bill.

February 17, 1977

REPORT ON SENATE BILL 367: Mr. Rob Smith of the Public Service Commission legal staff reported that the subcommittee meeting decided upon some amendments to this bill. On page 1, section 1, line 25, the words "24 hours" should be stricken and the words "two business days" should be inserted.

REPORT ON SENATE BILL 375: Mr. Smith noted that the witnesses seemed to be in agreement with the amendments that had been submitted to the secretary by the PSC on February 15.

REPORT ON SENATE BILLS 366 & 390: Mr. Smith commented that these bills were acceptable to the subcommittee as introduced.

REPORT ON SENATE BILL 362: Mr. Smith told the committee that the Brazier amendments were acceptable to the subcommittee and the PSC.

Mr. Brazier testified that the subcommittee got together on the language and had agreed on several amendments. (See Attached #1) These amendments would make sure that the protestants would file their testimony and exhibits only after the applicants had filed the same.

CONSIDERATION OF SB 426 & SB 386: Senator William Murray, chief sponsor of the legislation testified that SB 386 proposes the regulation of the relations between the new car dealers and the factory. The bill covers a number of different areas such as licensing, liability, appeals, etc. Sen. Murray turned the testimony over to Mr. Jerry Raunig of the Montana Auto Dealers Association.

Mr. Raunig said that he would address his comments to both SB 386 and to SB 426. These bills were introduced as a result of the problems created because the dealers do not own the franchises. The manufacturers are able to wield economic power over the dealers. They make decisions for the dealers on such things as the ads they are required to buy, expansion of facilities, etc., and when the dealers refuse to comply, the manufacturers threaten to cancel the franchise and in some cases they have done so. SB 386 and SB 426 would give the Montana new car dealers added protection against the undo hardships that the manufacturers can perpetrate. 37 states now have such protecting laws. With the difference in the economic power positions, the state must arbitrate.

Mr. Dan Murray, a former new car dealer from Lewistown, testified as to a personal experience in which the manufacturer required him to build a new facility which he could not afford at the time. When he was unable to complete the new facility due to the lack of funds, the manufacturer cancelled the franchise as of December 31, 1976.

Mr. George Vucanovich, a Helena auto dealer, testified that he had also had a personal experience with the manufacturers concerning product liability in which he was required to pay one-half of the damages in a law suit over some latent defects in a vehicle he handled. (Attached #2)

February 17, 1977

Mr. Larry Huss, representing the Montana Auto Dealers Association testified that he too was appearing in support of both SB 386 and SB 426. As an example of the type of actions that the manufacturers take against the auto dealers, Mr. Huss gave the history behind a case that he has taken over for a client. The case involved the problems of handing a dealership down to another relative at the time of retirement of the current dealer. The manufacturer refused to allow the dealership to remain in the family, thus depriving the dealer of the ability to transfer his business.

Mr. Huss continued his testimony by explaining that the purpose of the legislation is to have the state intervene where economic interests are such that the small Montana dealer cannot get a fair settlement from some of the largest corporations in the world. By adjusting the economic interests, the two parties will be put on equal footing.

Mr. Huss then explained SB 386 section by section. In covering SB 426, Mr. Huss commented that it had been copied from Wisconsin statutes, while SB 386 was copied from Arizona where that law has been in effect for four years.

Appearing as an opponent, Mr. Jack Rigg, representing the Motor Vehicle Manufacturers Association, said that the Association had taken no position on the bills, but that in the absence of a representative of the Chrysler Corporation, he had been asked to present a written statement from that Corporation and comment on their position. (See Attached #3) In conclusion to the written testimony of Chrysler, Mr. Rigg told the committee that there would be serious questions raised concerning the constitutionality of the two bills in that they would alter existing contracts between the dealers and the manufacturers.

Mr. Sid Gilliatt, representing General Motors Corporation, testified that GM objected to these bills for several reasons.

- 1) SB 386 does not permit the termination of a franchise when it is in the public interest to do so. Three examples of when it might be in the public interest to do so would include: a) when the dealer was closed for seven consecutive days, something now forbidden by contract; b) when the dealer is convicted of a felony; c) if the license of the dealer is revoked by the state. The state of Florida is currently experiencing a serious situation with dealerships because of a large fraud that has been uncovered. But state law forbids GM from terminating the franchises of those involved without 90 day notice.

- 2) As a second reason why GM objects to the bills, Mr. Gilliatt said that the bill contains no way to disqualify a person applying for dealership through the passing down of a dealership as outline in SB 426. The manufacturers might be forced to take on a felon, a person with whom the company had had a previous unsatisfactory relationship, or a person who already had most of the dealerships in a town, thereby creating a monopoly in a certain area.

- 3) The third reason why GM objects to the bills as explained to the committee by Mr. Gilliatt was that the dealer would be able to

February 17, 1977

initiate an automatic restraining order on the manufacturers. It has been the experience of GM that restraining orders can be frivolous, especially if they are not required to show harm in order to obtain one. This constitutes the denial of due process of law and GM has moved against such laws in four states for the same reason and the laws are currently under review. In Georgia the law was declared unconstitutional.

Mr. Gilliatt noted that GM was not opposed to reasonable regulation, but that they should not be denied due process. GM is in agreement with Chrysler's statement that these bills would interfere with existing contracts and are therefore unconstitutional.

In conclusion to his testimony on SB 386, Mr. Gilliatt read through SB 386 section by section noting GM's objections to the specific language. (See Attached #4)

In commenting on SB 426, Mr. Gilliatt stated that there was a conflict between SB 386 and SB 426. In addition, GM has a successor clause in their contract in which GM is obliged to give the dealership to the successor for two years to see if it will work out all right. This provision has been in the contracts since 1955 and in every instance the nominee has qualified to keep the franchise after two years. GM has terminated only two dealerships in Montana in the last five years and in both cases, the dealer died.

Mr. John Pursell, also of General Motors, testified to the committee on the warranty aspects of the bill. He noted that page 8, section 4, lines 16 to 20 were not included in the Arizona law that SB 386 was supposedly taken from. He further commented that this was anti-consumer because the dealer can raise the customer retail rate to get a higher warranty rate. GM's method of reimbursement for warranty work pays the dealer the cost of mechanic's wages plus 120% for the cost of doing business, reimburses 100% of the fringe benefits to the mechanics plus 50% of the fringe benefits to the dealer for the cost of administering the fringe benefits. This system is applied the same way to all dealers to be certain of the fairness of the system. GM also pays the dealers a claims advance so that they do not have to operate on their own capital waiting for the return of their costs. 61% have warranty rates equal to the retail rate and 86% are within \$1 of retail, based on the stated rate of the dealer.

This formula for warranty work, Mr. Pursell testified, is based on the operating report that all the dealers must file with the manufacturers. The dealer gross profit for warranty repair is 52% and the dealer gross profit for customer repair is 52.2%. The dealers' retail rate is in continual variance as they may give breaks to special customers, they may run specials, all reducing the stated retail rates.

Mr. Pursell stated that the only litigation that has ever taken place on the GM formula was in Tennessee in which a federal court ruled that the GM formula was the same as the retail rate. GM has been operating on that decree since it was handed down in 1971. Eight states have similar laws and no state has challenged the Tennessee consent decree.

February 17, 1977

Mr. Purcell suggested that SB 386 should be amended on page 8, lines 19 and 20 so that the bill would indicate that the rates would be established on a fair and reasonable basis. This language could be taken from Maryland law. (See Attached #5)

Chairman Manning opened the meeting for questions. Senator Hazelbaker asked if product liability is removed from the dealer in all cases. Mr. Huss answered that the law holds the dealer liable if the work is done negligently.

Senator Smith asked if the bill changes the liability to the manufacturer, when a consumer comes in with warranty work on a car that was bought out of state, would the consumer be forced to go back to the person from whom the car was purchased. Mr. Huss said that this bill does not change that. The dealers are required to do all warranty work. This bill only says that the manufacturer is responsible for latent defects in a vehicle. Senator Smith asked that the question be answered by a representative from GM also. Mr. Gilliatt responded that the general practice with dealers is to require them to perform all warranty work regardless of where the vehicle was purchased. Mr. Huss added that if a dealer refused to do warranty work then the manufacturer could cancel the franchise. This bill does not affect the manufacturers' ability to do that.

Senator Lockrem asked if the GM representatives had a copy of their master franchise contract. Mr. Gilliatt said that he did not have one with him at the time but would send one when he arrived back in Detroit.

Senator Lockrem asked why there were no dealers here at the hearing. Mr. Raunig answered that they could not get them here to testify because they feared economic retribution if the bill does not pass.

Senator Hager asked about the definition of the designated family member in SB 426 and whether or not it disinherited adopted children. Mr. Huss answered that it did not as adopted children have all the rights of blood relatives in Montana.

In closing Mr. Huss commented that the Chrysler statement was misleading and that Chrysler was opposed to the general principles of the bill. Chrysler had just cancelled a dealership in Cut Bank and had threatened to do the same to a dealer in Kalispell. As to the constitutionality of the proposal, the Arizona law was tested in court and the Supreme Court of the state upheld its constitutionality. The proof of public interest section was nothing new, as it applied to the motor carriers today; no new precedents were being set.

Mr. Huss said that as for the cost of attorney's fees, Montana statute requires that if one side can sue for treble damages, then the other side can, too. As for the successors' act, the manufacturers now have the right to approve the successor, thereby necessitating this act. Mr. Huss commented that GM does not want to pay the going rate for warranty work and that it has nothing to do with the consumer or GM's concern for them. The accusation that local dealers would raise the rates was ridiculous.

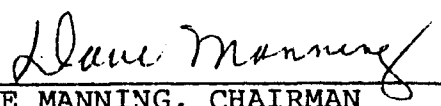
February 17, 1977

Mr. Huss said that the GM advancements for warranty work were misleading the committee, for there was a dealer in Billings who right now had \$1200 worth of warranty work done that GM refuses to pay. The definition of gross profits includes all of the normal business costs, not just labor. In conclusion, Mr. Huss said that he agreed that SB 386 was identical to the Arizona law except that the warranty provision was not included in Arizona. Everywhere the representatives traveled in Montana, they were asked for that specific provision.

Chairman Manning allowed the GM representatives to close with their comments being that they had traveled such long distances to come to this meeting. Mr. Gilliatt thanked the chairman and the committee for that opportunity. He said that GM was not opposing the rights of succession bill (SB 426) for they had been abiding by the same types of provisions in their own contracts since 1955. GM does not approve the successors, they are given a two year trial period, and in no case were any of the franchises cancelled after the trial. As to the warranty provisions, GM had no objection to paying the going rate to the dealer if it is justified by what the mechanic is paid and by the fringe benefits given to the mechanics.

CONSIDERATION OF SENATE BILL 420: Mr. Tom Crowley, the city engineer in Missoula, testified to the committee that he had a letter from the originator of the bill indicating that some of the wording had been changed in drafting and could lead to problems later in implementing the bill. (See Attached #6) The bill is not controversial and the Department of Highways Director is a proponent of the bill. The letter offers some of the sentiments as well as suggested amendments to the bill. There is reasonable cause for the bill because Bozeman had been sued and lost their case and Missoula had been sued and won their case. It would really be a shame to spend all of the time in court before a project could be started. If the city wanted to widen the sidewalks, if the Highway Department approved the project, the city would be allowed to let the contracts.

ADJOURNMENT: There being no further business, the meeting was adjourned at 11:05 a.m.



DAVE MANNING, CHAIRMAN

2/10/67

STATEMENT OF GEORGE VUCANOVICH

I appear in support of Senate Bill No. 386, pending before this committee which among other things proposes to limit dealer's liability where a defect in the product has originated with the manufacture and exists at the time the product is resold to the general public.

These defects, for the most part, are not readily apparent but are latent defects.

In November of 1972, I sold a 1973 Cheyenne 1/2 ton 4-wheel drive pick-up to a party not residing in Helena. The truck was warranted as free from certain defects by General Motors Corporation.

Very shortly after the truck was delivered, the owner noted a defect in the truck which was diagnosed as "a bent and sprung frame". I called that fact to the attention of the representative of the manufacturer and he, in turn, notified me not to work on the vehicle. The manufacturer's representative had offered to repair the defect but the purchaser would not accept a repair and demanded a new vehicle.

The purchaser then filed a complaint in the District Court alleging that the vehicle had been purchased from me and was warranted from defects by General Motors and that immediately thereafter the defect was noticed and diagnosed as "a bent and sprung frame". Both my company and General Motors Corporation were named as Defendants in the suit.

The matter proceeded to trial and judgment was entered against both myself and General Motors for the defect.

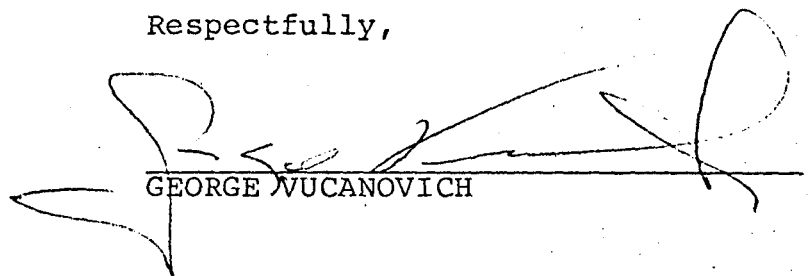
General Motors paid one-half of the judgment and I was required to pay the other one-half, although my company had nothing to do with the defect and it originated before it

was received by me and sold to the purchaser.

It is patently unfair and unjust that the dealer should be responsible for latent defects of which he can have no possible knowledge prior to selling the same, and certainly a product that he did not help manufacture.

In the event that this bill is passed, the dealer would not be held responsible for the latent defects and the burden placed where it should be, upon the manufacturer.

Respectfully,



GEORGE VUCANOVICH

good cause for withholding consent to the sale of a franchise is the

CHRYSLER CORPORATION
STATEMENT BEFORE MONTANA SENATE HIGHWAYS AND TRANSPORTATION COMMITTEE
FEBRUARY 17, 1977

REGARDING SB 386 AND SB 426

As a matter of principle Chrysler Corporation objects to legislation of the type exemplified by SB 386 and SB 426. We feel these bills as introduced are unreasonable, unwarranted, and probably unconstitutional because they alter the terms of existing contracts mutually agreed-upon and voluntarily entered into. We also believe these proposals further regulate an industry whose very existence is already threatened by over-regulation both by the individual states and, more particularly, by the federal government.

We do, however, recognize that our position is not universally accepted. Because of this fact, we are willing to submit to reasonable regulation, but we do ask that it in fact be reasonable. We believe that some of the provisions of these proposals are not reasonable and ask the Committee to consider certain amendments.

For example, on page 9, line 10, of SB 386, before a new franchise can be established, we would have to show that it was "in the public interest." Yet on page 13, line 24, we could not terminate a franchise if it would be "injurious" to the public. We agree that no one should commit acts "injurious to the public," but we do not believe we should have to prove a "benefit." We therefore request that the same criteria be applied in both instances and that page 9, line 10, be amended to read, "and that it is not injurious to the public interest."

Another example of unreasonableness, we believe, is found in Section 11 on page 12, lines 9, 10, and 11. This section says that the only good cause for withholding consent to the sale of a franchise is the

purchaser's financial or managerial capabilities. Conceivably, this would require us to franchise a person with whom we had legally terminated a relationship -- perhaps in another state -- for good and legitimate reasons. Even worse, it suggests that we would be forced to franchise a person with a criminal record for consumer fraud or other crimes even though Chrysler would not want such a person representing our corporation or our products. We request that this restrictive definition of "good cause" be omitted (page 10, line 9 after "sale." through line 14).

Again, in section 12 on the same page, we would apparently be forced to recognize the transfer of the franchise even if the transferee was completely incompetent to manage the business. We encourage the succession of wives, sons, or daughters to the father's business and our franchise agreements specifically provide for this contingency, but we think we should have the right to assure that they are qualified to run the business. We fail to see how they or the public would gain if the business were to fall into bankruptcy within a matter of months after succession. SB 426 at least provides that the manufacturer can refuse to honor the transfer if he has "good cause for refusal." We ask only that a similar provision be incorporated into section 12 of SB 386.

Finally, on page 16, line 20, and again in SB 426 on page 5, line 11, we feel there are unreasonable provisions. Both of these deal with treble damages. We submit that these damages are punitive in nature and imply a criminal statutory fine or penalty. In our opinion, they are not justified, as is here the case, in a civil action whose basis -- if any -- would lie in a contractual matter. We respectfully request that these provisions be omitted.

In conclusion, Chrysler Corporation does not believe these bills are

Statement of Chrysler Corporation
February 17, 1977
Page Three

necessary in order to protect the interests of the consumers of Montana and we ask that they be rejected. If they are not rejected, we ask the Committee to consider the arguments we have presented, the amendments we have suggested, and to assure that any legislation that may prove necessary be reasonable and fair to all parties affected.

Thank you.

Inter-Organization

GENERAL MOTORS CORPORATION

Date: February 16, 1977

To: Mr. S. G. Gilliatt

From: James P. Melican, Jr.

Subject: Montana SB-386

Pursuant to our discussion, I have reviewed the above-captioned bill and have the following comments:

A. Page 2, line 1 - The word "franchise" should be "franchisee." Obviously, the franchise itself is simply a contract and is not located in any county.

B. Page 8, line 10 - This should read, "As regards new motor vehicles, these delivery and preparation, etc." Obviously, if the dealer performs warranty or other repairs incorrectly, he should be responsible for any product liability consequences.

C. Page 8, line 18 - delete last word and delete lines 19 and 20. Substitute - "on a fair and reasonable basis."

D. Page 9, lines 8 through 10 - This states that the franchisor must prove both good cause for an additional dealership and that it ~~is~~ in the public interest. The fact that the establishment of an additional dealership would be in the public interest should itself constitute good cause and no further or additional showing should be necessary. It would be much preferable

Mr. S. G. Gilliatt
February 16, 1977
Page Two

from our standpoint if this read good cause or in the public interest. This is especially true in view of the fact that good cause for entering into an additional franchise is defined on page 14 in paragraph (16).

E. Page 9, line 15 - The words "and the franchisee may, at any time," does not make sense in context. There would be no reason for the franchisee to file such a notice.

F. Page 10, line 1 - At the end of this sentence, we should press for an additional sentence which states something to the effect that notice to the Department shall not be required when the termination or nonrenewal is sought because the franchisee has not been open for business for at least seven consecutive business days, he has been convicted of a felony, or any license which he has been required by the state to have has been suspended or revoked.

G. Page 10, line 20 - This introductory phrase "a person who receives," is troublesome, particularly in view of the language on lines 15 through 19 of this same page. It suggests that a person who is not a franchisee but who receives a copy of the notice simply as an interested person may be entitled to file a protest. The language should be amended to read "a franchisee who receives a copy of a notice, etc."

Mr. S. G. Gilliatt
February 16, 1977
Page Three

OBJECTING TO
ESTABLISHMENT
OF A NEW MOTOR VEHICLE
DEALER

H. Page 11, lines 16 through 18 - The burden of proof that good cause does not exist shall be with the franchisee. Since the public policy of this country and both the letter and spirit of the antitrust laws encourage competition, the franchisee who is attempting to exclude a competitor should have the burden of proving that competition would not be in the public interest.

I. Page 11, lines 22 through 25 and page 12, lines 1 through 6 - We should make every effort to have this paragraph eliminated. Subparagraph (a) would significantly modify the terms of the Dealer Agreement and subparagraph (b) is unnecessary in view of section 6 on page 15.

J. Page 12, line 7 through 14 - We should also attempt to have this paragraph eliminated. If we cannot get it eliminated, it would be better if we could get everything after the first sentence omitted.

K. Page 12, lines 15 through 23 - If we cannot get this paragraph eliminated, it would be better if, beginning on line 19, it read as follows, "the dealer's spouse, son, or daughter, the franchisor may not without good cause withhold its consent to the sale or transfer."

L. Page 14, lines 5 and 6 - The last clause would make more sense if it read "and any other motor vehicles of the same line-make in use in the community."

Mr. S. G. Gilliatt
February 16, 1977
Page Four

M. Page 14, lines 11 and 12 - The introductory phrase will no longer be needed if we are successful in having subsection (10) eliminated.

N. Page 14, line 22 - We should press for an additional consideration, preferably to be inserted immediately after (a), which reads as follows: "The amount of business transacted by other franchisors of similar line-makes in that community."

O. Page 16, lines 20 and 21 - There is no reason for the punitive provision for treble damages. This should read "in amount equal to pecuniary loss, together with costs including reasonable attorneys fees."

James P. Melican, Jr.
Attorney-in-Charge
Distribution
Office of the General Counsel

JPM:ct

cc: Mrs. Margo Parker

RECEIVED FOR FNTD

3:00

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE,
AT NASHVILLE

MAR 1 - 1971

BRANDON LEWIS, CL

GENERAL MOTORS CORPORATION)

-vs-

Civil Action
No. 5107

GEORGE F. MCCANLESS,
ATTORNEY GENERAL, ETC., ET AL)

CONSENT DECREE

In this cause the court finds with the consent and agreement of the parties and upon stipulation of the parties, all as evidenced by the signatures of their respective counsel of record affixed hereto:

1. That plaintiff's compensation to its dealers for warranty service will be on and after the date of the entry of this decree in the manner set forth in the Schedule of Compensation filed herewith and made a part hereof by reference as Exhibit A.

2. That said Schedule of Compensation presently constitutes compliance with the provisions of T.C.A. 59-1714 as amended by Chapter 426 of the Public Acts of 1968 of the General Assembly of the State of Tennessee and with the Rules of the Tennessee Motor Vehicle Commission.

3. That Rule Sixteen referred to in the amended complaint in this cause has been amended by the Tennessee Motor Vehicle Commission as set forth in Exhibit B, attached hereto.

4. That in view of the foregoing the parties have agreed that the complaint in this cause may be dismissed

Maryland

Attachment #

1974 CUMULATIVE SUPPLEMENT

Art. 66½, § 5-707

ment to the Baltimore City Court or the circuit court of the county as the case may be, wherein the dealer, manufacturer, distributor or factory branch resides.

(5) To resort to or use any advertisement in connection with his or its business which contains an insertion, representation or statement of fact which is false, deceptive, or misleading.

(6) To prevent or attempt to prevent by contract or otherwise any dealer or any owner, partner, or stockholder of any dealer from selling or transferring any part of the ownership interest of any of them to any other person or persons or party or parties; but no dealer, owner, partner, or stockholder may sell, transfer or assign the franchise or any right thereunder without the consent of the manufacturer, distributor, or factory branch, which consent shall not be unreasonably withheld.

(b) Violation of any provisions of this section subjects any violator to whom the licensing provisions of this part apply to the administrative sanctions of this part; and to criminal prosecution. (1972, ch. 544, § 3.)

§ 5-707. When license may be refused, suspended or revoked; hearing; contempt; appeal.

(a) The Administration may refuse, suspend, or revoke any license issued under this part if the Department finds that any manufacturer, distributor, or factory branch which is licensed or required to be licensed under this part has:

(1) Violated any provision of this Part VII or is performing or attempting to perform any act prohibited by this Part VII.

(2) Failed to comply with any written warranty agreement.

(3) Failed to reasonably compensate any authorized motor vehicle dealer who performs work to rectify the licensee's product or warranty defects, or delivery and preparation obligations. In the determination of what constitutes reasonable compensation under this law, the factors to be given consideration shall include, among others, the compensation being paid by other licensees to their dealers, the prevailing wage rate being paid by the dealers, and the prevailing labor rate being charged by the dealers, in the city or community in which the dealer is doing business.

(b) The Administration shall suspend or revoke any license issued under this part only after a hearing. At least ten (10) days prior to the date set for the hearing, the Department shall notify the licensee in writing of any charge made and afford the licensee an opportunity to be heard in person and by counsel in reference thereto. The written notice shall be served by delivery to the licensee by registered mail to the business address of the licensee of record with the Department. The hearing on the charges shall be at a time and place the Administration prescribes. The Administration may subpoena and bring before it any person or documents, and take the testimony of any person under oath in the manner prescribed in judicial procedure in the courts of this State in civil cases, with the same fees and mileage as provided by law in civil cases.

SENATE Highways & Transport COMMITTEE

BILL SB411, 412, 426, 386, 420

VISITORS' REGISTER

DATE 2/17

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPP
James R. Beck	DOH	420	✓	
George K. Beck	DOH	386	✓	
S. G. GILLIATT	GENERAL MOTORS CORP.	386		✓
J. C. Purcell	General Motors Corp.	426		✓
J. C. Purcell	General Motors Corp.	386		✓
Geoffrey L. Brazier	Consumer Council	362	✓	
Richard D. Platt	Mont. Optometric Assoc.	411		✓
John B. Riggs Jr.	Motor Vehicle Mfg. Assn.	386		
Larry Masenius	Admin. Motor Vehicles - DOS	411/412		✓
William S. Gower	LPG - Fiscal Analyst Assoc.	411/412	✓	
TOM Crowley	City Engr - Missoula	420	✓	
BILL MURRAY	SENATOR SPONSOR	386 & 426	✓	
DAN MURRAY	SELF	386 + 426	✓	
Gerald F. RADWIG	Montana Auto Dealers Assoc.	386 & 426	✓	
Larry Masenius	Montana Auto Dealers Assoc.	386 & 426	✓	
Tom Schneider	Mont. Pub. Eng. Assn.	411/412		X
Ed Stollman	Mont. Hwy. Patl.	411		X
Ed Stollman	MHP	411		
John Matthews	Justice	411		
K. J. Boulde	State Commission on Travel Conf.	420	✓	

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

February 17, 1977

The twelfth meeting of the Highways and Transportation Committee was called to order by Chairman Manning on the above date in Room 404 of the State Capitol Building at 6:00 p.m.

ROLL CALL: Senator Hazelbaker was excused, Senator Healy arrived at 6:10 and left at 6:45. All other members were present.

DISPOSITION OF SENATE BILL 366: Senator Smith moved that SB 366 do pass. Senator Aber seconded the motion. The motion carried unanimously with Senators Healy and Hazelbaker absent.

DISPOSITION OF SENATE BILL 160: Senator Lockrem moved that the amendments presented to the committee by Mr. Beck be adopted. (See Attached #1) Senator Hager seconded the motion. Senator Aber asked for clarification of what the amendments accomplished. Senator Lockrem said that the amendments would give the Department of Highways some latitude in utilizing the coal byproducts. There were no objections to the amendments. Senator Smith added that it also waived the rights of hearing in those cases already covered by other laws. The committee voted unanimously and the motion carried. Senator Lockrem moved that SB 160 do pass as amended. Senator Bergren seconded the motion. The motion carried with Senators Aber and Etchart voting no and Senators Hazelbaker and Healy absent.

DISPOSITION OF SENATE BILL 390: Senator Smith moved that SB 390 do pass. Senator Bergren seconded that motion. The motion carried unanimously with Senator Hazelbaker absent.

DISCUSSION OF SENATE BILL 208: Senator Lockrem moved that SB 208 do not pass. Senator Aber seconded that motion. Senator Lockrem explained that there was a problem with the bill needing substantial amendments. Senator Blaylock had received the attention of the Department of Administration which tends to be moving in the direction of the subcompact cars anyway. A resolution could accomplish the same thing. Chairman Manning told the committee that Senator Blaylock had asked that the committee delay and decision until Saturday when he could be there to tell of the additional research that the committee had requested of him. Senator Lockrem withdrew his motion and Senator Aber withdrew his second.

DISPOSITION OF SENATE BILL 367: Senator Smith moved that SB 367 be amended on page 1, line 25, striking the words "24 hours" and inserting "the next two business days". Senator Lockrem seconded the motion. The motion carried unanimously with Senator Hazelbaker absent. Senator Smith moved that SB 367 be further amended with Rob Smith's proposed amendment that on page 1, line 20, strike: "testimony taken at such hearing", insert: "report of the accident", following "be", strike: "transcribed and". Senator Hager seconded the motion. The motion carried unanimously with Senator Hazelbaker absent. Senator Smith moved that SB 367 do pass as amended. Senator Lockrem seconded the motion. The motion carried unanimously with Sen. Hazelbaker absent.

February 17, 1977

DISPOSITION OF SENATE BILL 426: Senator Graham moved that the amendments submitted by the auto dealers adding an immediate effective date be adopted. Senator Bergren seconded the motion. Senator Graham commented that the dealers felt that this was needed so that the manufacturers could not make reprisals between now and the date normally used as the effective date in July. The amendments passed unanimously with Senator Hazelbaker absent. Senator Graham moved that SB 426 do pass as amended. Senator Aber seconded the motion. The motion carried unanimously with Senator Hazelbaker absent.

DISCUSSION OF SENATE BILL 386: Senator Graham moved the dealers' amendments adding the effective date. Senator Smith said that he would like to look at this bill further before acting. Senator Aber concurred. Senator Bergren commented that if the GM amendments were accepted it would not be the same bill. Senator Graham said that the manufacturers are able now to throw a lot of things on top of the dealer which he has to pay for. If the dealer resists, the manufacturers threaten to take away the franchise. A man is entitled to run his own business.

Senator Aber commented that he had helped out the manufacturers when they were in a pinch. The fact that the dealers were having things forced upon them was not entirely the factory's fault. Some dealers were so tough that the factory representative hated to go to them. The story is not all one sided.

Senator Bergren noted that the consumers get it in the end. Being that the dealer pays money in Montana, the legislature should work more for him than for the manufacturer. Senator Graham said that he agreed. Whatever is shoved on top of the dealer the people pay for in the end.

Senator Lockrem moved that the effective date amendments be accepted by the committee. Senator Graham seconded the motion. The motion carried unanimously with Senator Hazelbaker absent.

Senator Smith said that he had some amendments. On page 8, lines 7-20 were problematic for him. This is shifting the warranty liability so that the consumers could not deal with the dealer and get anything done. If the consumer were to talk to the dealer the dealer could tell him to talk to the manufacturer. You can say what you like about the dealer, but with seven dealers in Senator Smith's own area, he is not able to get the car serviced at any dealer but the one he bought the vehicle from. This bill would further relieve the dealer from any responsibility.

Senator Aber stated that there was a lot behind the warranty work. There was a problem with the constant complainer. These people will be in all the time complaining that there is something wrong with their car, and the dealer can't charge for his time with the complainer because they claim it is warranty work.

Senator Lockrem stated that he could appreciate Senator Smith's problem, but on the other side of the coin, you have Mr. Vuchanovich's

February 17, 1977

problem. GM billed him for the damages.

Senator Bergren said that GM seemed concerned that they would have to pay the same rate as the regular work at the shop. If lines 16-20 were deleted, all would be covered above in the bill.

Senator Aber said that he couldn't understand their idea on that. The work doesn't have to be that high. There is never a discount given on warranty work whereas many specials are run for other work. Senator Aber said that he didn't think the dealer should expect to get rich off of the factory work.

Senator Smith suggested that on page 8, following line 20 that the words "any dealer holding a franchise must do all warranty work for the franchise item he is selling" be inserted. Senator Etchart said that he agreed with Senator Smith that that should be part of the dealers' responsibilities and obligations.

Senator Lockrem commented that he could appreciate Senator Smith's comments, but warranty work is really a blank check. He submitted as part of the record (Attached #2) a copy of a master Buick agreement and read from the last page a section dealing with nulification of the contract with the passage of laws. Senator Lockrem suggested that a sentence could be added to read "Nothing in this section should preclude a dealer from doing warranty work."

Senator Etchart commented that we were not off the hook yet. Senator Smith said that the consumer would still have no recourse with the dealer in the state and in some cases would have to deal with the manufacturer in Japan.

Senator Lockrem moved that the committee pass consideration of SB 386 for the night. Chairman Manning said that he was inclined to agree with the dealers, but the problems should be worked out before passing the bill out. The committee voted unanimously to pass consideration for the night.

DISPOSITION OF SENATE BILL 375: Senator Graham reminded the committee that this was the bill dealing with the discriminatory freight rates. Senator Smith moved that the bill be amended according to the amendments submitted to the committee by Mr. Swanberg representing the railroads. Senator Bergren seconded the motion. The motion carried unanimously with Senators Healy and Hazelbaker absent. Senator Graham moved that the bill do pass as amended. Senator Smith seconded the motion. The motion carried unanimously with Senators Healy and Hazelbaker absent.

DISPOSITION OF SENATE BILL 392: Senator Hager reported that he had been able to contact Mr. Rob Smith of the PSC and that the PSC had deleted the additional cost to the board as it felt it could handle the added costs with the higher fees. Page 9 includes a loophole to deal with the additional costs that might be accrued. Senator Hager said that he was satisfied with the explanation. Senator Smith moved

HIGHWAYS AND TRANSPORTATION COMMITTEE

Date 2/17

[illegible]

MINUTES OF THE MEETING
HIGHWAYS AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

February 19, 1977

The thirteenth meeting of the Highways and Transportation Committee was called to order by Chairman Manning on the above date in Room 404 of the state capitol building at 9:30 a.m.

ROLL CALL: Senator Graham was absent. Senator Lockrem arrived at 9:47, Senator Healy at 10:05, and Senator Hager at 10:32. All other members were present.

Those present to testify included the following:

Joe Sol	Montana Highway Patrol
Duane B. Tooley	" " "
Thomas Schnider	Montana Public Employees Assoc.
Larry Huss	Montana Motor Carriers Assoc.
Terry Whiteside	Montana Department of Agriculture
James R. Beck	Department of Highways
Jack R. Beckert	" " "
John W. Larson	Union Pacific Railroad
Gene J. Carroll	Office of the Governor
Ken Clark	United Transportation Union
Don Calman	Montana Motor Carriers Assoc.
Dean Zinnecker	Montana Association of Counties
J.C. Purcell	General Motors
W.S. Gosnell	Fiscal Analyst
Roland D. Pratt	Montana Optometric Association
C.J. Knutson	Brotherhood of Motor Way Employees
David Foster	---
Jim Whitehead	---

CONSIDERATION OF SENATE BILL 411: Senator Larry Fasbender, chief sponsor of the legislation, testified that this bill would provide for civilian drivers' license examiners. He noted that the fiscal note would only be such a drastic increase if the state retained all of the existing personnel, and that was not the intent of the bill. Actually, the bill would result in a savings because the civilian examiner would not require the equipment or the salary of the patrolmen currently doing the examining. It is not the intent of the author to discharge all of the patrolmen examiners, but to transfer them to other areas and through retirement the examiners could collect their pension while transferring to a civilian examiner at a lower salary. Senator Fasbender indicated in the fiscal analyst's report to the committee that this plan could be implemented for a net savings do to attrition, etc.

Colonel Joe Sol of the Montana Highway Patrol testified that he did not agree that the uniform makes the examiner, but rather the quality of the person now hired be required to continue to keep the drivers' licensing program at its current level. If these quality people were hired, then there would be no savings. Currently the

February 19, 1977

DISPOSITION OF SENATE BILL 412: Senator Lockrem moved to table SB 412. Senator Hager seconded the motion. The motion carried unanimously with Senator Graham absent.

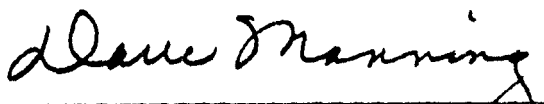
DISPOSITION OF SENATE BILL 208: Senator Lockrem moved that SB 208 do not pass. He commented that the Department of Administration is trying to accomplish the same thing as the bill calls for, that the bill has amendment problems, that the bill would be better as a resolution and that a resolution of similar intent had been introduced in the House. Senator Smith seconded the motion. Senator Hazelbaker noted that we had brought the problem to the attention of the departments and that passing this bill would simply clutter up the books. Chairman Manning said that he had requested that Senator Blaylock go to the Department of Administration to be educated a little as the the practices followed now. Senator Hager commented that it was hard to get Toyotas fixed. The committee voted unanimously, Senator Graham being absent, and the motion carried.

DISPOSITION OF SENATE BILL 386: Senator Smith moved to amend SB 386 on page 2, section 1, line 1, striking "franchise" and inserting "franchisee"; on page 8, section 4, line 16, following "only", inserting "; provided, however, that this section shall not effect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract." (See Attached #3) Senator Aber seconded the motion. The motion carried unanimously with Senator Graham absent. Senator Lockrem moved that SB 386 do pass as amended, reminding the committee that Senator Graham's effective date amendments had also passed the committee earlier. Senator Hazelbaker seconded the motion. The motion carried with Senator Graham absent, Senator Smith voting no and the rest of the committee voting yes.

DISCUSSION OF SENATE BILL 440: Senator Healy moved that SB 440 do pass, noting that there was practically no opposition to the bill. Senator Etchart commented that he felt that SB 440 was too large a package to pass without having a chance to really look at the bill. He suggested that the bill be held over the weekend to allow the committee to give the bill a harder look. Senator Healy withdrew his motion.

Chairman Manning said that he would hold the bill until next week. Senator Hazelbaker suggested that if the bill were passed without recommendation it would get adequate study on the floor. Chairman Manning commented that it was asking a lot of us to dump this bill on us Thursday. He noted that there was mild opposition but that the bill would set up lots of waves. If there is no opposition, the bill will be held for now.

ADJOURNMENT: There being no further discussion the meeting was adjourned at 11:15 a.m.


DAVE MANNING, CHAIRMAN

Attachment #3

Senator R. Smith

SUGGESTED AMENDMENTS TO SENATE BILL 386:

1. Amend page 2, section 1, line 1.

Strike: "franchise"

Insert: "franchisee"

2. Amend page 8, section 4, line 16.

Following: "only"

Insert: "; provided, however, that this section shall not effect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract."

HIGHWAYS AND TRANSPORTATION COMMITTEE

Date 2/19

[illegible]

SENATE Highways & Transportation COMMITTEE

BILL SB 411, 440, 432,
SJR 36

VISITORS' REGISTER

DATE 2/19

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
D. B. Tooley	MHP	411		✓
Joe B. Sol	MHP	411		✓
Thomson	MHP	411		✓
Larry Ross	Mont. Motor Carriers Assoc.	440	✓	
Perry Whithead	Mont. Dept. of Ag.	440		
Jim Whithead	—	440		
John W. Larson	Union Pacific Railroad	440		
Russell Foster	—	440		
James E. Beck	D.O.H.	440		
Frank R. Beck	D.O.H.	432, 440 SJR 35	✓	✓
Gen. J. GARROLL	Office of Governor	440		
Ken Clark	United Transportation Union	440		
C. J. Houston	Bro. Mts. W. Emp.	440		
Don Coleman	Mont. Motor Carriers Assoc.	440	✓	
Dean Zimmerman	Mont. Assn. of Cos.	132	✓	
W. C. Swindle	General Motors	386		✓
W. S. Gosnell	Fiscal Analyst	411	✓	
Roland D. Pratt	Mont. Optometric Assoc.	411		✓

STANDING COMMITTEE REPORT

February 19

19 77

MR. President

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 386

Respectfully report as follows: That SENATE introduced bill, be amended as follows: Bill No. 386

1. Amend title, line 18.

Following: "PENALTIES"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

2. Amend page 2, section 1, line 1.

Strike: "franchise"

Insert: "franchisee".

3. Amend page 8, section 4, line 16.

Following: "only"

Insert: "; provided, however, that this section shall not effect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract"

4. Amend page 17.

Following: line 10

Insert: "Section 9. Effective date. This act shall be effective up ~~XXXXXX~~ passage and approval and shall be applicable to all acts and tran actions commenced or completed after such effective date."

AND AS SO AMENDED, DO PASS

B. G.

BUSINESS & INDUSTRY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 125	Providing a remedy to consumers of professional services who are harmed because of a violation of professional standards	3/03/77	Regan	4/01/77	AS AMENDED CONCURRED IN	4/06/77
SB 245	Providing that a temporary rate increase may be approved	3/03/77	Murray	4/01/77	AS AMENDED CONCURRED IN	4/06/77
SB 329	Describing the purpose of architecture licensing laws	3/03/77	Roskie	4/01/77	AS AMENDED CONCURRED IN	4/06/77
SB 362	Lengthening the time necessary for rail carrier tariff revisions to become automatically effective	3/03/77	Devine	4/01/77	BE NOT CONCURRED IN	4/06/77
SB 386	Regulating the relationship between new motor vehicle dealers and manufacturers distributors and importers	3/03/77	Murray	3/14/77	CONCURRED IN	3/21/77
SB 426	Providing for the succession of interest by family members to the ownership interests of a motor vehicle dealership	3/03/77	Murray	3/14/77	CONCURRED IN	3/21/77

SENATE BILL NO. 386

INTRODUCED BY MURRAY, DEVINE, TURNAGE,

STEPHENS, GOODOVER, HOYLAN, ROSKIE, ABER,

MATHERS, HEALY, E. SMITH, McCALLUM, OLSON,

DUNKLE, LONE, HIMSL, KOLSTAD, DUVER, FLYNN,

PETERSON, LEE, RASMUSSEN, MEHRENS, THOMAS,

GRAHAM, MANLEY, FASBENDER, WARDEN, BERGREN, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE
MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR
ADMINISTRATION BY THE DEPARTMENT OF ~~JUSTICE~~ BUSINESS
REGULATION; PROVIDING FOR THE REGULATION AND REVIEW OF
TRANSACTIONS BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROVIDING FOR THE LIMITATION OF NEW MOTOR VEHICLE DEALER'S
PRODUCTS LIABILITY; PROVIDING FOR NOTICE, HEARING, AND
APPEAL IN DISPUTES BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW
MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROHIBITING COERCION OF NEW MOTOR VEHICLE DEALERS; AND
PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; ~~AND PROVIDING AN~~
~~EFFECTIVE DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in this act, the
following definitions apply:

(1) "Community" means the relevant market area of a
franchise. For the purposes of this act, the relevant market
area of a franchise is the county or counties in which the
franchise FRANCHISEE is located.

(2) "Distributor" or "wholesaler" means a person who
sells or distributes new motor vehicles to new motor vehicle
dealers in this state or who maintains distributor
representatives in this state.

(3) "Distributor branch" means a branch office
maintained or availed of by a distributor or wholesaler for
the sale of new motor vehicles to new motor vehicle dealers
in this state for directing or supervising its
representatives in this state.

(4) "Factory branch" means a branch office maintained
or availed of by a manufacturer for the sale of new motor
vehicles to distributors or for the sale of new motor
vehicles to new motor vehicle dealers in this state or for
directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two
or more persons when all of the following conditions are
included:

(a) a commercial relationship of definite duration or

1 continuing indefinite duration is involved;

2 (b) the franchisee is granted the right to offer,
3 sell, and service in this state new motor vehicles
4 manufactured or distributed by the franchisor;

5 (c) the franchisee, as a separate business,
6 constitutes a component of franchisor's distribution system;
7 and

8 (d) the operation of the franchisee's business is
9 substantially reliant on the franchisor for the continued
10 supply of new motor vehicles, parts, and accessories.

11 (6) "Franchisee" means a person who receives new motor
12 vehicles from the franchisor under a franchise and who
13 offers, sells, and services such new motor vehicles to and
14 for the general public.

15 (7) "Franchisor" means a person who manufactures,
16 imports, or distributes new motor vehicles and who may
17 enter into a franchise.

18 (8) "Importer" means a person who transports or
19 arranges for the transportation of a foreign manufactured
20 new motor vehicle into the United States for sale in this
21 state.

22 (9) "Manufacturer" means a person who manufactures or
23 assembles new motor vehicles or who manufactures or installs
24 on previously assembled truck chassis special bodies or
25 equipment, which when installed form an integral part of the

1 new motor vehicle and which constitutes a major
2 manufacturing alteration, but does not include a person who
3 installs a camper on a pickup truck.

4 (10) "Motor vehicle" means a self-propelled vehicle
5 including without limitation an automobile, motor bus,
6 motorcycle, truck, and a truck-tractor.

7 (11) "New motor vehicle dealer" means a person who
8 buys, sells, exchanges, or offers or attempts to negotiate a
9 sale or exchange or any interest in or who is engaged in the
10 business of selling new motor vehicles or used motor
11 vehicles taken in trade on new motor vehicles.

12 (12) "Department" means the department of justice
13 BUSINESS REGULATION.

14 Section 2. Persons subject to licensing. (1) No
15 manufacturer, distributor, factory branch, or distributor
16 branch may engage in business in Montana except in
17 accordance with the requirements of this act. The provisions
18 of this act do not apply to a public officer engaged in the
19 discharge of his official duties or to a trustee, receiver,
20 or other officer acting under the jurisdiction of a court;
21 to financial institutions disposing of repossessed vehicles;
22 or to a person disposing of his personal vehicle. The
23 provisions of this act regulating and licensing
24 manufacturers, distributors, factory branches, distributor
25 branches, and franchisors apply only to those manufacturers,

1 distributors, factory branches, distributor branches, and
2 franchisors of motor vehicles as defined by this act.

3 (2) A manufacturer, distributor, factory branch,
4 distributor branch, importer, or franchisor transacting
5 business within Montana by offering, selling, trading,
6 consigning, or otherwise transferring a new motor vehicle to
7 a new motor vehicle dealer must be licensed by the state of
8 Montana. The department shall issue licenses to qualified
9 applicants upon receipt of a license fee in the amount of
10 \$15 accompanied by the information required in this section.
11 The following information shall be submitted by an applicant
12 upon forms supplied by the department:

- 13 (a) the name and address of the applicant;
- 14 (b) the make and model of each new motor vehicle to be
15 franchised;
- 16 (c) the name and address of each of the applicant's
17 franchisees within the state; and
- 18 (d) the name and address of each factory branch,
19 distributor branch, agent or representative within the
20 state.

21 (3) The license may be renewed each year if the
22 applicant is in compliance with the provisions of this act,
23 remits a renewal fee in the amount of \$15, and notifies the
24 department of any changes in the information previously
25 supplied.

1 (4) No new motor vehicle may be sold in this state
2 unless either the manufacturer on direct dealership of
3 domestic vehicles, the importer of foreign manufactured
4 vehicles on direct dealership, or the distributor on
5 indirect dealerships of either domestic or foreign vehicles
6 is licensed as provided in this act. The obtaining of a
7 license under this act conclusively establishes that a
8 manufacturer, distributor, or importer is subject to the
9 laws of this state regulating manufacturers, importers, and
10 distributors.

11 Section 3. Administration. The department shall
12 supervise and regulate all persons required by this act to
13 be licensed. In the supervision and regulation thereof the
14 department may:

- 15 (1) make investigations it considers necessary;
- 16 (2) conduct hearings and compel attendance of
17 witnesses at the hearings pursuant to Title 82, chapter 42;
18 and
- 19 (3) prescribe rules it determines necessary to carry
20 out the provisions of this act.

21 Section 4. Filing agreement -- product liability. (1)
22 A franchisee must, at the time he applies for a new motor
23 vehicle dealer license under the provisions of 53-118 file
24 with the department a certified copy of his written
25 agreement with a manufacturer and a certificate of

1 appointment as dealer or distributor. The certificate of
 2 appointment must be signed by an authorized agent of the
 3 manufacturer of domestic vehicles whenever there is a direct
 4 manufacturer dealer agreement or by an authorized agent of
 5 the distributor whenever the manufacturer is wholesaling
 6 through an appointed distributorship. The certificate must
 7 be signed by an authorized agent of the importer of
 8 foreign-made vehicles whenever there is a direct
 9 importer-dealer agreement or by an authorized agent of the
 10 distributor whenever there is an indirect distributor-dealer
 11 agreement. The distributor's certificate of appointment must
 12 be signed by an authorized agent of the manufacturer of
 13 domestically manufactured vehicles or by an authorized agent
 14 of the manufacturer or importer of foreign made vehicles.

15 (2) A franchisee need not file a written agreement or
 16 certificate of appointment if the manufacturer on direct
 17 dealerships or distributor on indirect dealerships or
 18 importer on direct dealerships uses the identical basic
 19 agreement for all its franchised dealers or distributors in
 20 this state and certifies in the certificate of appointment
 21 that the blanket agreement is on file and the written
 22 agreement with the particular dealer or distributor,
 23 respectively, is identical with the filed blanket agreement
 24 and that he has filed with the department one such agreement
 25 together with a list of franchised dealers or distributors.

1 (3) A manufacturer, distributor, or importer shall
 2 notify the department within 30 days of any revision of or
 3 addition to the basic agreement on file or of any franchise
 4 supplement to the agreement. Annual renewal of a certificate
 5 filed as provided in this section is not required.

6 (4) A manufacturer on direct dealerships, distributor
 7 on indirect dealerships, or importer on direct dealerships
 8 who has filed with the department an agreement used by all
 9 its franchisees in this state together with a list of all
 10 such franchisees and who fails to notify the department
 11 within 30 days of any revision, change, or addition thereto
 12 is guilty of a misdemeanor and upon conviction shall be
 13 fined not to exceed \$500.

14 (5) A manufacturer must file with the department a
 15 copy of the delivery and preparation obligations required to
 16 be performed by a dealer prior to the delivery of a new
 17 motor vehicle to a buyer. These delivery and preparation
 18 obligations constitute the dealer's only responsibility for
 19 product liability as between the dealer and the
 20 manufacturer. Any mechanical, body, or parts defects arising
 21 from an express or implied warranty of the manufacturer
 22 constitute the manufacturer's product or warranty liability
 23 only; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT EFFECT
 24 THE OBLIGATIONS OF NEW MOTOR VEHICLE DEALERS TO PERFORM SUCH
 25 WARRANTY REPAIR AND MAINTENANCE AS MAY BE REQUIRED BY LAW OR

1 CONTRACT. The manufacturer must compensate an authorized
2 dealer who performs work to rectify the manufacturer's
3 product or warranty defect or delivery and preparation
4 obligations at the dealer's regular established retail rate
5 for similar work.

6 (6) The dealer must furnish the purchaser of a new
7 vehicle with a signed copy of the manufacturer's delivery
8 and preparation requirements indicating that each of those
9 requirements has been performed.

10 Section 5. Limitations on cancellation and
11 termination. (1) Notwithstanding the terms, provisions, or
12 conditions of any agreement or franchise, no franchisor may
13 cancel, terminate, or refuse to continue a franchise unless
14 the franchisor has cause for termination or noncontinuance.

15 (2) No franchisor may enter into a franchise for the
16 purpose of establishing an additional new motor vehicle
17 dealership in any community in which the same line-make is
18 then represented unless there is good cause for an
19 additional new motor vehicle dealership under a franchise
20 and that it is in the public interest.

21 (3) If a franchisor seeks to terminate or not continue
22 a franchise or seeks to enter into a franchise establishing
23 an additional new motor vehicle dealership of the same
24 line-make, the franchisor shall, within 30 days of the
25 intended action, and the franchisee may, at any time, file a

1 notice with the department of intention to terminate or not
2 continue the franchise or to enter into a franchise for
3 additional representation of the same line-make. No notice
4 of intention to terminate or not continue a franchise may be
5 required from a franchisor until the conclusion of any
6 review proceeding of that intention offered to the
7 franchisee under the franchise. This section does not apply
8 to an intended termination or noncontinuance of a franchise
9 that the franchisee elects voluntarily, pursuant to a plan
10 established by a franchisor, to submit to binding
11 arbitration.

12 (4) Upon receiving a notice of intention under the
13 provisions of subsection (3) of this section, the department
14 shall, within 5 days of receipt of a notice of intention,
15 send by certified mail, with return receipt requested, a
16 copy of the notice to the franchisor and to the franchisee
17 whose franchise the franchisor seeks to establish,
18 terminate, or not continue. If the notice states an intent
19 to establish an additional new motor vehicle dealership, a
20 copy of the notice shall be sent within 5 days of receipt to
21 all franchisees in the community who are then engaged in the
22 business of offering to sell or selling the same line-make.
23 Copies of notices shall be addressed to the principal place
24 of business of each recipient and to the statutory agent of
25 each corporate recipient. The department may also give a

1 copy of the franchisor's notice to any other parties whom
2 the department may consider interested persons, such copy to
3 be in the form and substance and given in the manner the
4 department finds appropriate.

5 (5) A person who receives or is entitled to receive a
6 copy of a notice provided for in subsection (4) of this
7 section may object to the approval of the proposed action by
8 filing a written objection with the department within 15
9 days from the date the notice was received by the person
10 entitled to receive the notice. If no objection is filed
11 within 15 days from the date the notice was received, the
12 proposed action shall be approved.

13 (6) If a timely objection has been filed, the
14 department shall enter an order fixing the time, which shall
15 be within 30 days of the date of the order, and place of a
16 hearing on the objection and shall send by certified mail
17 with return receipt requested a copy of the notice provided
18 for in subsection (4) of this section.

19 (7) The department may upon request continue the date
20 of hearing for a period of 30 days and may upon application,
21 but not ex parte, continue the date of hearing for an
22 additional period of 30 days.

23 (8) Upon hearing, the franchisor has the burden of
24 proof to establish that good cause exists to terminate or
25 not continue the franchise. When there is an objection to

1 the establishment of a new motor vehicle dealership, the
2 burden of proof that good cause does exist shall be with the
3 franchisor.

4 (9) The rules of evidence for such hearing shall be
5 those found in Title 82, chapter 42. The department shall
6 reasonably apportion all costs between the parties.

7 (10) Notwithstanding the terms, provisions, or
8 conditions of an agreement or franchise, the following do
9 not constitute good cause for the termination or
10 noncontinuance of a franchise:

11 (a) a change in ownership of the franchisee's
12 dealership;

13 (b) the fact that the franchisee refused to purchase
14 or accept delivery of a new motor vehicle, part, accessory,
15 or any other commodity or service not ordered by the
16 franchisee.

17 (11) In instances where the change in ownership has the
18 effect of the sale of the franchise, the franchisor may not
19 without good cause withhold its consent to the sale. Good
20 cause relates only to the transferee's financial and
21 managerial capabilities or to the inability of the
22 transferee to comply with a state or federal law relating to
23 new motor vehicle dealerships. The burden of establishing
24 good cause is upon the franchisor.

25 (12) Notwithstanding the terms, provisions, or

1 conditions of an agreement or franchise, in the event of the
 2 sale or transfer of ownership of the franchisee's dealership
 3 by sale or transfer of the business or by stock transfer to
 4 the dealer's spouse, son, or daughter, the franchisor shall
 5 give effect to such a change in the franchise unless the
 6 transfer of the franchisee's new motor vehicle dealer's
 7 license is denied or the new owner is unable to obtain a
 8 license under the laws of this state.

9 {13} The department may issue subpoenas, administer
 10 oaths, compel the attendance of witnesses, and production of
 11 books, papers, documents, and all other evidence. The
 12 department may apply to the district court of the county in
 13 which the hearing is held for a court order enforcing this
 14 section. The hearing shall be conducted pursuant to Title
 15 82, chapter 42.

16 {14} If a franchisor enters into or attempts to enter
 17 into a franchise, whether upon termination or refusal to
 18 continue another franchise or upon the establishment of an
 19 additional new motor vehicle dealership in a community where
 20 the same line-make is then represented without first
 21 complying with the provisions of this act, no license under
 22 53-118 may be issued to that franchisee or proposed
 23 franchisee to engage in the business of selling new motor
 24 vehicles manufactured or distributed by that franchisor.

25 {15} In determining whether good cause has been

1 established for terminating or not continuing a franchise,
 2 the department shall take into consideration the existing
 3 circumstances, including but not limited to:

4 (a) amount of business transacted by the franchise;
 5 (b) investment necessarily made and obligations
 6 incurred by the franchisee in the performance of his part of
 7 the franchise;

8 (c) permanency of the investment;

9 (d) whether it is injurious to the public welfare for
 10 the business of the franchisee to be discontinued;

11 (e) whether the franchisee has adequate new motor
 12 vehicle facilities, equipment, parts, and qualified
 13 management, sales, and service personnel to reasonably
 14 provide consumer care for the new motor vehicles sold at
 15 retail by the franchisee and any other new motor vehicle of
 16 the same line-make;

17 (f) whether the franchisee refuses to honor warranties
 18 of the franchisor to be performed by the franchisee if the
 19 franchisor reimburses the franchisee for such warranty work
 20 performed by the franchisee; and

21 (g) except as provided in subsection (10) of this
 22 section, failure by the franchisee to substantially comply
 23 with those requirements of the franchise that are determined
 24 by the department to be reasonable and material.

25 {16} In determining whether good cause has been

1 established for entering into an additional franchise for
2 the same line-make the department shall take into
3 consideration the existing circumstances, including but not
4 limited to:

5 (a) amount of business transacted by other franchisees
6 of the same line-make in that community;

7 (b) investment necessarily made and obligations
8 incurred by other franchisees of the same line-make in that
9 community in the performance of their part of their
10 franchises; and

11 (c) whether the franchisees of the same line-make in
12 that community are providing adequate consumer care for the
13 new motor vehicle products of the line-make which shall
14 include the adequacy of new motor vehicle dealer sales and
15 service facilities, equipment, supply of parts, and
16 qualified management, sales, and service personnel.

17 (17) A transcript of the testimony of each witness
18 taken at the hearing shall be made and preserved. Within 30
19 days after the hearing, the department shall make written
20 findings of fact and conclusions and enter a final order.

21 (18) Any party to the hearing before the department may
22 appeal pursuant to Title 82, chapter 42.

23 Section 6. Coercion prohibited. (1) A manufacturer of
24 new motor vehicles, factory branch, distributor, distributor
25 branch, importer, field representative, officer, agent, or

1 any representative thereof may not coerce or attempt to
2 coerce a new motor vehicle dealer to accept delivery of a
3 new motor vehicle, a part, or an accessory therefor, or any
4 other commodity that has not been ordered by the dealer.

5 (2) A manufacturer, factory branch, distributor,
6 distributor branch, importer, field representative, officer,
7 agent or representative thereof may not coerce or attempt to
8 coerce a new motor vehicle dealer to enter into an agreement
9 with such manufacturer, factory branch, distributor,
10 distributor branch, or representative thereof or do any
11 other act unfair to the dealer by:

12 (a) threatening to cancel or not renew a franchise
13 existing between the manufacturer, factory branch,
14 distributor, distributor branch, or representative thereof
15 and the dealer; or

16 (b) threatening to withhold, delay, or disrupt the
17 receipt of new motor vehicles or any motor vehicle parts or
18 supplies ordered by the dealer from the manufacturer,
19 factory branch, distributor, distributor branch, importer,
20 or representative or agent thereof.

21 Section 7. Penalties. (1) A person who violates any
22 provision of this act is guilty of a misdemeanor and upon
23 conviction shall be fined not less than \$500 or more than
24 \$1,000 for each violation. Each day that a violation
25 continues or occurs constitutes a separate violation.

1 (2) If any new motor vehicle dealer incurs pecuniary
 2 loss due to a violation of this act by a manufacturer,
 3 distributor, importer, or factory branch or representative
 4 or agent thereof, the dealer may recover damages therefor in
 5 a court of competent jurisdiction in amount equal to three
 6 times the pecuniary loss, together with costs including
 7 reasonable attorney's fees.

8 Section 8. Cease and desist orders. When the
 9 department has reasonable cause to believe, from information
 10 furnished to or from an investigation made by it, that any
 11 person is engaged in any business regulated by this act
 12 without being licensed as required, it shall immediately
 13 issue and serve upon such person, by certified mail, a cease
 14 and desist order, requiring him to cease and desist from
 15 further engaging in that business. Upon failure of that
 16 person to comply with the order, the department shall file
 17 an action in the district court of Lewis and Clark County to
 18 restrain and enjoin the person from engaging in the
 19 business. The court in the action shall proceed as in other
 20 actions for injunctions.

21 SECTION 9. EFFECTIVE DATE. THIS ACT SHALL BE
 22 EFFECTIVE UPON PASSAGE AND APPROVAL AND SHALL BE APPLICABLE
 23 TO ALL ACTS AND TRANSACTIONS COMMENCED OR COMPLETED AFTER
 24 SUCH EFFECTIVE DATE.

25 SECTION 10. SEVERABILITY. IF A PART OF THIS ACT IS

1 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
 2 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
 3 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
 4 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
 5 INVALID APPLICATIONS.

-End-

HOUSE BUSINESS AND INDUSTRY COMMITTEE

March 14, 1977

The meeting was called to order at 10:10 a.m. with all members present with the exception of Rep. Bradley, who was excused.

Senate Bill No. 258 was discussed. Sen. Peterson, sponsor, gave a brief explanation of the bill. He then introduced Mr. Tom Canelli.

Mr. Tom Canelli stated that the gas should be sold to independents and consumers at gross gallonage because there is a loss of volume due to the average temperature in Montana.

There were no opponents.

Mr. Canelli answered a question by saying the actual loss of gallonage is 149 gallons based on a 30° temperature.

Senate Bill No. 219 was discussed. Sen. Goodover, sponsor, said the bill was drafted upon request of the Commissioner of Insurance. It is not the typical innocuous bill. He gave a brief explanation of the bill.

Mr. Harry Mischera, proponent, stated that this act is similar to the existing law. He further explained the bill stating the purpose is to prevent reoccurrence of a previous mistake.

There were no opponents or questions.

Senate Bill No. 386 and 426 were discussed. Sen. Murray, sponsor, said that Senate Bill No. 386 is a relations bill whereas Senate Bill No. 426 is a succession bill. He gave a brief explanation of Senate Bill No. 386. He said the problems which have necessitated the reason for this bill will be explained by Mr. Jerry Raunig.

Mr. Jerry Raunig, proponent, stated that both bills are introduced due to new car dealers not owning a franchise. He said he does not feel that either of these bills will create an undue burden. The State should be placed in the middle of this relationship when these disputes do arise.

Mr. Dan Murray said he lost his franchise on December 31, 1975. He said he had the smallest showroom in the city, but General Motors insisted he build a larger showroom. He could not do it, therefore, he went out of business.

Mr. George Vucanovich and Mr. Larry Huss also testified as proponents (testimony attached).

Mr. Huss stated that Senate Bill No. 426 is the Dealer's Succession Act. He gave an explanation of the sections. He said that the economic interest is so diversified. This is a bill to have the government intervene between the small businessman and the economic giants.

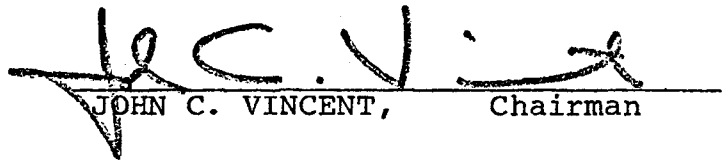
March 14, 1977, page 2.

Mr. Stuart Wilson testified as an opponent to the bill. He stated that he struggles each day with the rules and regulations the same as anyone else. The purpose of a bigger building is to serve the public. The matter of successorship is in deciding who the best man would be. He stated that this bill was a special interest bill. He disagreed with the penalties one would receive if there were one mistake.

Sen. Murray asked Mr. Huss to close. Mr. Huss said that the factories had told his client that they would decide who would run his business. The qualifications of the successors is what they are looking at when they go to the administrative procedures. He said he hoped that Montana would have the same type of protection as the other states.

There was some discussion regarding parts of the bill.

The meeting was adjourned at 12:00 noon.


JOHN C. VINCENT, Chairman

BUSINESS AND INDUSTRY COMMITTEE

March 21, 1977

The meeting was called to order at 10:15 a.m., with all members present except Reps. Bradley and Tower, who were excused.

Testimony was reopened on Senate Bill 345. Mr. Knepper submitted prepared testimony, which is attached. He said the rating bureau is a statistical organization which furnishes the rates.

Senate Bill 366 was discussed. Senator Devine, sponsor, said the bill was introduced at the request of the PSC. He gave a brief explanation of the bill, and said the jail sentence will be deleted from the bill.

Senate Joint Resolution 37 was discussed next. Senator Hazelbaker, sponsor, explained the bill and said it would affect the residential and small communities and raise their rates. Proponents were Senator Jergeson, Mr. Dee Monsen, Mr. Jay Preston and Mr. Jack McDonald. Testimony is attached. Opponents were Mr. Keith Wilson, Mr. McLean Clark, Mr. Ray Roher, Mr. Tom Austin, Mr. Del Mathis (who presented Mr. Bill Yeagher's testimony), Mr. Tim Timmons, Mr. John Abbey, Mr. Ibe Baldry, Mr. Keith Hein. Their testimony is attached. Senator Jergeson said he was first interested in the bill by the rural telephone cooperatives.

Senate Bill 305 was discussed next. Senator Lee, sponsor, gave a brief explanation of the bill. Mr. Pat McKittrick said for several years these trusts had consultants and administrators in Spokane. He then explained what the bill would do. Jo Driscoll said our law prohibits the licensing of any organization. The problem is that there are a number of out-of-state firms. The proposed amendment would help us to license these firms, and would give us greater control. Mr. Cadigan presented testimony, which is attached, as did Bill Kokoruda and Boyce Clark. In closing, Senator Lee said the testimony submitted shows the problems with trust funds and the bill will correct some of them.

The Committee went into Executive Session to consider several bills.

Senate Bill 182 - Rep. Scully moved that the bill BE CONCURRED IN. He withdrew that motion and moved that the amendments be adopted. The motion to amend was adopted unanimously. Rep. Scully then moved that the bill BE CONCURRED IN AS AMENDED. The motion passed unanimously.

Senate Bill 202 - Rep. Aageson moved that the amendments be adopted. The motion passed unanimously. He then moved that the bill BE CONCURRED IN AS AMENDED. The motion passed with Reps. Harrington, Nathe and Sheldon voting NO.

Senate Bill 231 - Rep. Fabrega moved that the bill BE CONCURRED IN. The motion passed with Rep. Scully voting NO.

Senate Bill 241 - Rep. Nathe moved that the amendments be adopted. The motion passed unanimously. He then moved that the bill BE CONCURRED IN AS AMENDED. The motion passed unanimously.

Senate Bill 280 - Rep. Kenny moved that the bill BE NOT CONCURRED IN. Rep. Metcalf made a substitute motion to adopt the amendment. Rep. Scully moved to pass consideration for the day. Rep. Scully's motion was passed.

Senate Bill 301 - Rep. Fabrega moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Bill 328 - Rep. Tropila moved that the amendments be adopted and as amended, to table the bill. The motion passed with Rep. Vincent voting NO.

Senate Bill 345 - Rep. Vincent moved to pass consideration. The motion passed.

Senate Bill 370 - Rep. Vincent moved to pass consideration. The motion passed.

Senate Bill 386 - Rep. Nathe moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Bill 426 - Rep. Quilici moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Joint Resolution 37 - Rep. Scully moved that the bill BE NOT CONCURRED IN. The motion passed with Reps. Aageson and Quilici voting NO.

Senate Bill 366 - Rep. Tropila moved that the bill BE CONCURRED IN. The motion passed unanimously.

Senate Bill 305 - Rep. Fabrega moved to adopt the amendments proposed by Mr. Clarke. The motion passed unanimously. Rep. Fabrega then moved that the bill BE NOT CONCURRED IN AS AMENDED. The motion passed with Reps. Quilici, Harrington, Shelden, Metcalf, Harper and Vincent voting NO, Rep. Tropila abstaining.

The meeting adjourned at 1:25 p.m.


JOHN VINCENT, Chairman

HOUSE OF REPRESENTATIVES

March 22, 1977

Committee of the whole amendment to SENATE BILL NO. 386, third reading copy.

1. Amend page 9, section 5, subsection (3), line 24.

Following: "shall,"

Strike: "within 30 days of"

Insert: "not less than 30 days prior to"

AS AMENDED BE CONCURRED IN

SENATE BILL NO. 386

INTRODUCED BY MURRAY, DEVINE, TURNAGE,
STEPHENS, GOODOVER, BOYLAN, ROSKIE, ABER,
MATHERS, HEALY, E. SMITH, MCCALLUM, OLSON,
DUNKLE, LOWE, HIMSL, KOLSTAD, DUVER, FLYNN,
PETERSON, LEE, RASMUSSEN, MEHRENS, THOMAS,
GRAHAM, MANLEY, FASBENDER, WARDEN, BERGREN, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE
MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR
ADMINISTRATION BY THE DEPARTMENT OF JUSTICE BUSINESS
REGULATION; PROVIDING FOR THE REGULATION AND REVIEW OF
TRANSACTIONS BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR
VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROVIDING FOR THE LIMITATION OF NEW MOTOR VEHICLE DEALER'S
PRODUCTS LIABILITY; PROVIDING FOR NOTICE, HEARING, AND
APPEAL IN DISPUTES BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW
MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS;
PROHIBITING COERCION OF NEW MOTOR VEHICLE DEALERS; AND
PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; AND PROVIDING AN
EFFECTIVE DATE."

REFERENCE BILL

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in this act, the
following definitions apply:

(1) "Community" means the relevant market area of a
franchise. For the purposes of this act, the relevant market
area of a franchise is the county or counties in which the
franchise FRANCHISEE is located.

(2) "Distributor" or "wholesaler" means a person who
sells or distributes new motor vehicles to new motor vehicle
dealers in this state or who maintains distributor
representatives in this state.

(3) "Distributor branch" means a branch office
maintained or availed of by a distributor or wholesaler for
the sale of new motor vehicles to new motor vehicle dealers
in this state for directing or supervising its
representatives in this state.

(4) "Factory branch" means a branch office maintained
or availed of by a manufacturer for the sale of new motor
vehicles to distributors or for the sale of new motor
vehicles to new motor vehicle dealers in this state or for
directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two
or more persons when all of the following conditions are
included:

(a) a commercial relationship of definite duration or

1 continuing indefinite duration is involved;

2 (b) the franchisee is granted the right to offer,
3 sell, and service in this state new motor vehicles
4 manufactured or distributed by the franchisor;

5 (c) the franchisee, as a separate business,
6 constitutes a component of franchisor's distribution system;
7 and

8 (d) the operation of the franchisee's business is
9 substantially reliant on the franchisor for the continued
10 supply of new motor vehicles, parts, and accessories.

11 (6) "Franchisee" means a person who receives new motor
12 vehicles from the franchisor under a franchise and who
13 offers, sells, and services such new motor vehicles to and
14 for the general public.

15 (7) "Franchisor" means a person who manufactures,
16 imports, or distributes new motor vehicles and who may
17 enter into a franchise.

18 (8) "Importer" means a person who transports or
19 arranges for the transportation of a foreign manufactured
20 new motor vehicle into the United States for sale in this
21 state.

22 (9) "Manufacturer" means a person who manufactures or
23 assembles new motor vehicles or who manufactures or installs
24 on previously assembled truck chassis special bodies or
25 equipment, which when installed form an integral part of the

1 new motor vehicle and which constitutes a major
2 manufacturing alteration, but does not include a person who
3 installs a camper on a pickup truck.

4 (10) "Motor vehicle" means a self-propelled vehicle
5 including without limitation an automobile, motor bus,
6 motorcycle, truck, and a truck-tractor.

7 (11) "New motor vehicle dealer" means a person who
8 buys, sells, exchanges, or offers or attempts to negotiate a
9 sale or exchange or any interest in or who is engaged in the
10 business of selling new motor vehicles or used motor
11 vehicles taken in trade on new motor vehicles.

12 (12) "Department" means the department of justice
13 BUSINESS REGULATION.

14 Section 2. Persons subject to licensing. (1) No
15 manufacturer, distributor, factory branch, or distributor
16 branch may engage in business in Montana except in
17 accordance with the requirements of this act. The provisions
18 of this act do not apply to a public officer engaged in the
19 discharge of his official duties or to a trustee, receiver,
20 or other officer acting under the jurisdiction of a court;
21 to financial institutions disposing of repossessed vehicles;
22 or to a person disposing of his personal vehicle. The
23 provisions of this act regulating and licensing
24 manufacturers, distributors, factory branches, distributor
25 branches, and franchisors apply only to those manufacturers,

1 distributors, factory branches, distributor branches, and
2 franchisors of motor vehicles as defined by this act.

3 (2) A manufacturer, distributor, factory branch,
4 distributor branch, importer, or franchisor transacting
5 business within Montana by offering, selling, trading,
6 consigning, or otherwise transferring a new motor vehicle to
7 a new motor vehicle dealer must be licensed by the state of
8 Montana. The department shall issue licenses to qualified
9 applicants upon receipt of a license fee in the amount of
10 \$15 accompanied by the information required in this section.

11 The following information shall be submitted by an applicant
12 upon forms supplied by the department:

13 (a) the name and address of the applicant;

14 (b) the make and model of each new motor vehicle to be
15 franchised;

16 (c) the name and address of each of the applicant's
17 franchisees within the state; and

18 (d) the name and address of each factory branch,
19 distributor branch, agent or representative within the
20 state.

21 (3) The license may be renewed each year if the
22 applicant is in compliance with the provisions of this act,
23 remits a renewal fee in the amount of \$15, and notifies the
24 department of any changes in the information previously
25 supplied.

1 (4) No new motor vehicle may be sold in this state
2 unless either the manufacturer on direct dealership of
3 domestic vehicles, the importer of foreign manufactured
4 vehicles on direct dealership, or the distributor on
5 indirect dealerships of either domestic or foreign vehicles
6 is licensed as provided in this act. The obtaining of a
7 license under this act conclusively establishes that a
8 manufacturer, distributor, or importer is subject to the
9 laws of this state regulating manufacturers, importers, and
10 distributors.

11 Section 3. Administration. The department shall
12 supervise and regulate all persons required by this act to
13 be licensed. In the supervision and regulation thereof the
14 department may:

15 (1) make investigations it considers necessary;

16 (2) conduct hearings and compel attendance of
17 witnesses at the hearings pursuant to Title 82, chapter 42;
18 and

19 (3) prescribe rules it determines necessary to carry
20 out the provisions of this act.

21 Section 4. Filing agreement -- product liability. (1)
22 A franchisee must, at the time he applies for a new motor
23 vehicle dealer license under the provisions of 53-118 file
24 with the department a certified copy of his written
25 agreement with a manufacturer and a certificate of

1 appointment as dealer or distributor. The certificate of
 2 appointment must be signed by an authorized agent of the
 3 manufacturer of domestic vehicles whenever there is a direct
 4 manufacturer dealer agreement or by an authorized agent of
 5 the distributor whenever the manufacturer is wholesaling
 6 through an appointed distributorship. The certificate must
 7 be signed by an authorized agent of the importer of
 8 foreign-made vehicles whenever there is a direct
 9 importer-dealer agreement or by an authorized agent of the
 10 distributor whenever there is an indirect distributor-dealer
 11 agreement. The distributor's certificate of appointment must
 12 be signed by an authorized agent of the manufacturer of
 13 domestically manufactured vehicles or by an authorized agent
 14 of the manufacturer or importer of foreign made vehicles.

15 (2) A franchisee need not file a written agreement or
 16 certificate of appointment if the manufacturer on direct
 17 dealerships or distributor on indirect dealerships or
 18 importer on direct dealerships uses the identical basic
 19 agreement for all its franchised dealers or distributors in
 20 this state and certifies in the certificate of appointment
 21 that the blanket agreement is on file and the written
 22 agreement with the particular dealer or distributor,
 23 respectively, is identical with the filed blanket agreement
 24 and that he has filed with the department one such agreement
 25 together with a list of franchised dealers or distributors.

1 (3) A manufacturer, distributor, or importer shall
 2 notify the department within 30 days of any revision of or
 3 addition to the basic agreement on file or of any franchise
 4 supplement to the agreement. Annual renewal of a certificate
 5 filed as provided in this section is not required.

6 (4) A manufacturer on direct dealerships, distributor
 7 on indirect dealerships, or importer on direct dealerships
 8 who has filed with the department an agreement used by all
 9 its franchisees in this state together with a list of all
 10 such franchisees and who fails to notify the department
 11 within 30 days of any revision, change, or addition thereto
 12 is guilty of a misdemeanor and upon conviction shall be
 13 fined not to exceed \$500.

14 (5) A manufacturer must file with the department a
 15 copy of the delivery and preparation obligations required to
 16 be performed by a dealer prior to the delivery of a new
 17 motor vehicle to a buyer. These delivery and preparation
 18 obligations constitute the dealer's only responsibility for
 19 product liability as between the dealer and the
 20 manufacturer. Any mechanical, body, or parts defects arising
 21 from an express or implied warranty of the manufacturer
 22 constitute the manufacturer's product or warranty liability
 23 only; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT EFFECT
 24 THE OBLIGATIONS OF NEW MOTOR VEHICLE DEALERS TO PERFORM SUCH
 25 WARRANTY REPAIR AND MAINTENANCE AS MAY BE REQUIRED BY LAW OR

1 ~~CONTRACT~~. The manufacturer must compensate an authorized
2 dealer who performs work to rectify the manufacturer's
3 product or warranty defect or delivery and preparation
4 obligations at the dealer's regular established retail rate
5 for similar work.

6 (6) The dealer must furnish the purchaser of a new
7 vehicle with a signed copy of the manufacturer's delivery
8 and preparation requirements indicating that each of those
9 requirements has been performed.

10 Section 5. Limitations on cancellation and
11 termination. (1) Notwithstanding the terms, provisions, or
12 conditions of any agreement or franchise, no franchisor may
13 cancel, terminate, or refuse to continue a franchise unless
14 the franchisor has cause for termination or noncontinuance.

15 (2) No franchisor may enter into a franchise for the
16 purpose of establishing an additional new motor vehicle
17 dealership in any community in which the same line-make is
18 then represented unless there is good cause for an
19 additional new motor vehicle dealership under a franchise
20 and that it is in the public interest.

21 (3) If a franchisor seeks to terminate or not continue
22 a franchise or seeks to enter into a franchise establishing
23 an additional new motor vehicle dealership of the same
24 line-make, the franchisor shall, ~~within 30 days of~~ NOT LESS
25 THAN 30 DAYS PRIOR TO the intended action, and the

1 franchisee may, at any time, file a notice with the
2 department of intention to terminate or not continue the
3 franchise or to enter into a franchise for additional
4 representation of the same line-make. No notice of intention
5 to terminate or not continue a franchise may be required
6 from a franchisor until the conclusion of any review
7 proceeding of that intention offered to the franchisee
8 under the franchise. This section does not apply to an
9 intended termination or noncontinuance of a franchise that
10 the franchisee elects voluntarily, pursuant to a plan
11 established by a franchisor, to submit to binding
12 arbitration.

13 (4) Upon receiving a notice of intention under the
14 provisions of subsection (3) of this section, the department
15 shall, within 5 days of receipt of a notice of intention,
16 send by certified mail, with return receipt requested, a
17 copy of the notice to the franchisor and to the franchisee
18 whose franchise the franchisor seeks to establish,
19 terminate, or not continue. If the notice states an intent
20 to establish an additional new motor vehicle dealership, a
21 copy of the notice shall be sent within 5 days of receipt to
22 all franchisees in the community who are then engaged in the
23 business of offering to sell or selling the same line-make.
24 Copies of notices shall be addressed to the principal place
25 of business of each recipient and to the statutory agent of

1 each corporate recipient. The department may also give a
2 copy of the franchisor's notice to any other parties whom
3 the department may consider interested persons, such copy to
4 be in the form and substance and given in the manner the
5 department finds appropriate.

6 (5) A person who receives or is entitled to receive a
7 copy of a notice provided for in subsection (4) of this
8 section may object to the approval of the proposed action by
9 filing a written objection with the department within 15
10 days from the date the notice was received by the person
11 entitled to receive the notice. If no objection is filed
12 within 15 days from the date the notice was received, the
13 proposed action shall be approved.

14 (6) If a timely objection has been filed, the
15 department shall enter an order fixing the time, which shall
16 be within 30 days of the date of the order, and place of a
17 hearing on the objection and shall send by certified mail
18 with return receipt requested a copy of the notice provided
19 for in subsection (4) of this section.

20 (7) The department may upon request continue the date
21 of hearing for a period of 30 days and may upon application,
22 but not ex parte, continue the date of hearing for an
23 additional period of 30 days.

24 (8) Upon hearing, the franchisor has the burden of
25 proof to establish that good cause exists to terminate or

1 not continue the franchise. When there is an objection to
2 the establishment of a new motor vehicle dealership, the
3 burden of proof that good cause does exist shall be with the
4 franchisor.

5 (9) The rules of evidence for such hearing shall be
6 those found in Title 82, chapter 42. The department shall
7 reasonably apportion all costs between the parties.

8 (10) Notwithstanding the terms, provisions, or
9 conditions of an agreement or franchise, the following do
10 not constitute good cause for the termination or
11 noncontinuance of a franchise:

12 (a) a change in ownership of the franchisee's
13 dealership;

14 (b) the fact that the franchisee refused to purchase
15 or accept delivery of a new motor vehicle, part, accessory,
16 or any other commodity or service not ordered by the
17 franchisee.

18 (11) In instances where the change in ownership has the
19 effect of the sale of the franchise, the franchisor may not
20 without good cause withhold its consent to the sale. Good
21 cause relates only to the transferee's financial and
22 managerial capabilities or to the inability of the
23 transferee to comply with a state or federal law relating to
24 new motor vehicle dealerships. The burden of establishing
25 good cause is upon the franchisor.

(12) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's spouse, son, or daughter, the franchisor shall give effect to such a change in the franchise unless the transfer of the franchisee's new motor vehicle dealer's license is denied or the new owner is unable to obtain a license under the laws of this state.

(13) The department may issue subpoenas, administer oaths, compel the attendance of witnesses, and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing shall be conducted pursuant to Title 82, chapter 42.

(14) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented without first complying with the provisions of this act, no license under 53-118 may be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(15) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee; and

(g) except as provided in subsection (10) of this section, failure by the franchisee to substantially comply with those requirements of the franchise that are determined by the department to be reasonable and material.

(16) In determining whether good cause has been established for entering into an additional franchise for the same line-make the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care for the new motor vehicle products of the line-make which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel.

(17) A transcript of the testimony of each witness taken at the hearing shall be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(18) Any party to the hearing before the department may appeal pursuant to Title 82, chapter 42.

Section 6. Coercion prohibited. (1) A manufacturer of new motor vehicles, factory branch, distributor, distributor

branch, importer, field representative, officer, agent, or any representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to accept delivery of a new motor vehicle, a part, or an accessory therefor, or any other commodity that has not been ordered by the dealer.

(2) A manufacturer, factory branch, distributor, distributor branch, importer, field representative, officer, agent or representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to enter into an agreement with such manufacturer, factory branch, distributor, distributor branch, or representative thereof or do any other act unfair to the dealer by:

(a) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer; or

(b) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent thereof.

Section 7. Penalties. (1) A person who violates any provision of this act is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$1,000 for each violation. Each day that a violation

1 continues or occurs constitutes a separate violation.

2 (2) If any new motor vehicle dealer incurs pecuniary
3 loss due to a violation of this act by a manufacturer,
4 distributor, importer, or factory branch or representative
5 or agent thereof, the dealer may recover damages therefor in
6 a court of competent jurisdiction in amount equal to three
7 times the pecuniary loss, together with costs including
8 reasonable attorney's fees.

9 Section 8. Cease and desist orders. When the
10 department has reasonable cause to believe, from information
11 furnished to or from an investigation made by it, that any
12 person is engaged in any business regulated by this act
13 without being licensed as required, it shall immediately
14 issue and serve upon such person, by certified mail, a cease
15 and desist order, requiring him to cease and desist from
16 further engaging in that business. Upon failure of that
17 person to comply with the order, the department shall file
18 an action in the district court of Lewis and Clark County to
19 restrain and enjoin the person from engaging in the
20 business. The court in the action shall proceed as in other
21 actions for injunctions.

22 SECTION 9. EFFECTIVE DATE. THIS ACT SHALL BE
23 EFFECTIVE UPON PASSAGE AND APPROVAL AND SHALL BE APPLICABLE
24 TO ALL ACTS AND TRANSACTIONS COMMENCED OR COMPLETED AFTER
25 SUCH EFFECTIVE DATE.

1 SECTION 10. SEVERABILITY. IF A PART OF THIS ACT IS
2 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
3 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
4 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
5 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
6 INVALID APPLICATIONS.

-End-